15257

RECORD, CASE NO. 15257.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1893.

TERM NO., 887.

THE UNITED STATES, APPELLANT,

vs.

THE LATE CORPORATION OF THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS ET AL.

APPEAL FROM THE SUPREME COURT OF THE TERRITORY OF UTAH.

FILED FEBRUARY 8, 1893.

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1 In the supreme court of the Territory of Utah.

THE UNITED STATES OF AMERICA, PLAINTIFF,
vs.
THE LATE CORPORATION OF THE CHURCH OF Jesus Christ of Latter-Day Saints, and John Taylor, late trustee in trust, and Wilford Woodruff, Lorenzo Snow, Erastus Snow, Franklin D. Richards, Brigham Young, Moses Thatcher, Francis M. Lyman, John Henry Smith, George Teasdale, Heber J. Grant, and John W. Taylor, late assistant trustees in trust of said corporation, defendants.

COMPLAINT.

To the judges of the supreme court of the Territory of Utah:

The plaintiff, the United States of America, by George S. Peters, United States attorney in and for the Territory aforesaid, who brings this suit by direction of Augustus H. Garland, Attorney-General of the United States, brings this bill of complaint against the late corporation known and claiming to exist as the Church of Jesus Christ of Latter-Day Saints, and John Taylor, late trustee in trust, and Wilford Woodruff, Lorenzo Snow, Erastus Snow, Franklin D. Richards, Brigham Young, Moses Thatcher,
2 Francis M. Lyman, John Henry Smith, George Teasdale, Heber J. Grant, and John W. Taylor, late assistant trustees in trust of the said corporation aforesaid, which was or claimed to be, and exercise the powers of a corporation created and organized and existing under and by virtue of an ordinance of the provisional State of Deseret, reënacted and ratified by the legislature of Utah; and therefore the plaintiff complains and says:

First. That on the 8th day of February, 1851, the assembly of the so-called State of Deseret, which afterwards was organized as the Territory of Utah, passed an ordinance incorporating as a corporation the Church of Jesus Christ of Latter-Day Saints, which ordinance was afterwards, on the 19th day of January, in the year 1855, reënacted by the legislature and approved by the governor of the Territory of Utah, a copy of which ordinance, as reënacted as aforesaid, is hereto attached, marked "Exhibit A," and which the plaintiff makes a part of this bill.

Second. That John Taylor, on and immediately before the 19th day of February, 1887, was and had been trustee in trust, and Wilford Woodruff, Lorenzo Snow, Erastus Snow, Franklin D. Richards, Brigham Young, Moses Thatcher, Francis M. Lyman, John Henry Smith, George Teasdale, Heber J. Grant, and John W. Taylor (the twelfth assistant is to the plaintiff unknown, whose name when discovered, the plaintiff asks leave to make a party hereto), were the assistant trustees of the corporation of the Church of Jesus Christ of Latter-Day Saints.

3 Third. That by the act of incorporation stated in paragraph one of this bill, the corporation thereby created was authorized to hold and occupy real and personal estate, with such other powers as are stated in the "Exhibit A" of the first paragraph, and by one trustee-in-trust

and twelve assistant trustees, to receive, hold, buy, sell, manage, and control the real and personal property of said corporation, as will more fully appear by reference to "Exhibit A" hereto attached.

Fourth. That under and by virtue of the said act of incorporation set forth in paragraph one of this bill the said corporation of the Church of Jesus Christ of Latter-Day Saints was organized, and did buy, receive, acquire, and hold large amounts of real estate and personal property of great value in the Territory of Utah, after the first day of July, 1862, the precise amount, value, or description of which the plaintiff is unable to state, but asks leave to prove; and the plantiff alleges, on information and belief, that the value of the real estate is about two millions of dollars, and of the personal property about one million dollars, which said corporation held and owned on the 19th day of February, 1887, and which the defendants now, in violation of the laws of the United States, still claim to hold and own.

Fifth. That the corporation of the Church of Jesus Christ of Latter-Day Saints from its organization until the 19th day of February, 1887, was a corporation or association for religious or charitable purposes.

Sixth. That by virtue of the provisions of the third section of the act of Congress of the first day of July, 1862, reënacted as section 1890
4 of the Revised Statutes of the United States, any corporation or association for religious or charitable purposes was forbidden to acquire or hold real estate in any Territory during the existence of the Territorial government of greater value than fifty thousand dollars; that of the real estate held by the corporation of the Church of Jesus Christ of Latter-Day Saints on the 19th day of February, 1887, as set forth in the third paragraph of this bill, more than fifty thousand dollars in value thereof has been acquired and held since the first day of July, 1862, which is not held or occupied as a building or ground appurtenant thereto for the purpose of the worship of God, or parsonage connected therewith, or burial ground.

Seventh. That by virtue of the premises the real estate referred to and stated in paragraph fourth of this complaint, which, on or before the 19th day of February, 1887, was owned and held by the corporation of the Church of Jesus Christ of Latter-Day Saints, was and is subject to escheat to the United States.

Eighth. That on the 19th day of February, 1887, the charter and act of incorporation of the corporation of the Church of Jesus Christ of Latter-Day Saints was disapproved, repealed, and annulled by the Congress of the United States, and the said corporation was thereby dissolved, and all the real estate owned and occupied by it in excess of fifty thousand dollars, which was not on the 19th day of February, 1887, held and occupied as a building or ground appurtenant thereto for the purpose of the worship of God, or parsonage connected therewith, or burial ground, was
5 subjected to escheat to the United State.

Ninth. That the said corporation of the Church of Jesus Christ of Latter-Day Saints, and the successor of the said John Taylor, whose name is to the plaintiff unknown, as trustee-in-trust, and Wilford Woodruff, Lorenzo Snow, Erastus Snow, Franklin D. Richards, Brigham Young, Moses Thatcher, Francis M. Lyman, John Henry Smith, George Teasdale, Heber J. Grant, and John W. Taylor, assistant trustees, the de-

fendants, wrongfully and in violation of the laws of the United States, still claim to hold and do exercise the powers which were held and exercised by the said corporation of the Church of Jesus Christ of Latter-Day Saints, as stated in paragraph first of this bill, and are unlawfully possessing and using the real estate referred to in the fourth paragraph of this bill, and are receiving and unlawfully applying to its and their own use the rents, issues, and profits thereof, and falsely and wrongfully claim the right to sell, use, and dispose of the same.

Tenth. That since the 19th day of February, 1887, there has been and is no person lawfully authorized to take charge of, manage, preserve, or control the property—real and personal—which on or before the day and year last aforesaid was held, owned, possessed, and used by the corporation of the Church of Jesus Christ of Latter-Day Saints, and by reason thereof all the said property as referred to in the third paragraph of this bill, is subject to irreparable and irremedial loss and destruction.

6 Eleventh. That, as plaintiff is informed and believes, the aforesaid John Taylor, who is designated in the former part of this complaint as trustee in trust of aforesaid corporation, on the 25th day of July, 1887, died and departed this life; and as to his successor in office as said trustee in trust of said corporation, plaintiff has no knowledge or information, but asks that when said successor's name is discovered, he may be made a party to this action.

Prayers.

The plaintiff therefore prays:

First. That the defendants may be required to full, true, and perfect answers to the premises in writing make; the oath of said defendants to said answers being hereby expressly waived.

Second. That a proper person may be appointed receiver to collect and get in all of the outstanding debts and monies due to the said defendant corporation, to take possession of, manage, control, and collect the rents, issues, and profits from the real estate thereof, and that the defendant corporation, its officers and agents, be ordered forthwith to surrender and deliver up to such receiver all the assets, property, effects, and the possession of the real estate belonging to said corporation, and also all monies, notes, drafts, bills of exchange, checks or other evidences of indebtedness due and owing to the said corporation, as well as all books of account, accounts, deeds, bonds, mortgages, certificates of stock, and papers of every nature belonging to said corporation, and that the said receiver

7 may, under direction of this court, continue the management of the said business until the sale or other disposition can be made thereof according to law under and by virtue of the order of the court.

Third. That a decree be made by this honorable court declaring the dissolution and annullment of the charter of the corporation of the Church of Jesus Christ of Latter-Day Saints.

Fourth. That this honorable court may appoint a commissioner to select and set apart out of the real estate which was held and occupied by the corporation of the Church of Jesus Christ of Latter-Day Saints such real estate as may be lawfully held for religious uses out of the real estate heretofore held by the said corporation.

Sixth. That the court shall make such necessary orders and decrees, and take such proceedings from time to time as may be just and equitable to wind up the affairs of the said corporation conformably to law and equity.

Sixth. For such other and further relief in the premises as the nature of the case may require and as to your honors may seem just and meet and according to equity and good conscience.

And may it please your honors also to grant unto the plaintiff the writ of subpœna of the United States of America to be directed to the said defendants and to any confederate or confederates when discovered therein,
and thereby commanding them and each of them at a certain day,
8 under a certain penalty therein specified, personally to be and appear
before your honors in this honorable court, for and in behalf of the late corporation of the Church of Jesus Christ of Latter-Day Saints, and then and there to answer all and singular the premises, and to stand and abide such order and decree herein as to your honors shall seem meet and just and agreeable to equity and good conscience; and to grant to plaintiff any other lawful and appropriate process or orders to effect the appearance of the said defendants or any other person representing or authorized to represent the late corporation of the Church of Jesus Christ of Latter-Day Saints.

And the plaintiff will ever pray.

GEO. S. PETERS,
United States Attorney.

A. H. GARLAND,
Atty. Genl., U. S.

9 EXHIBIT A.

An ordinance incorporating the Church of Jesus Christ of Latter-Day Saints.
(*Approved February 8th*, 1851.)

(550.) SEC. 1. Be it ordained by the general assembly of the State of Deseret: That all that portion of the inhabitants of said State, which now are or hereafter may become residents therein, and which are known and distinguished as "The Church of Jesus Christ of Latter-Day Saints," are hereby incorporated, constituted, made, and declared a body corporate with perpetual succession, under the original name and style of "The Church of Jesus Christ of Latter-Day Saints," as now organized, with full power and authority to sue and be sued, defend and be defended in all courts of law or equity in this State; to establish, order, and regulate worship; and hold and occupy real and personal estate, and have and use a seal, which they may alter at pleasure.

(551.) SEC. 2. And be it further ordained that said body or church, as a religious society, may, at a general or special conference, elect one "trustee in trust," and not to exceed twelve assistant trustees, to receive, hold, buy, sell, manage, use, and control the real and personal property of said church, which said property shall be free from taxation; which trustee and assistant trustees, when elected or appointed, shall give bonds with approved security, in whatever sum the said conference may deem sufficient,
for the faithful performance of their several duties, which said
10 bonds, when approved, shall be filed in the general church recorder's office, at the seat of general church business, when said bonds

are approved by said conference; and said trustee and assistant trustees shall continue in office during the pleasure of said church, and there shall also be made by the clerk of the conference of said church a certificate of such election or appointment of said trustee and assistant trustees, which shall be recorded in the general church recorder's office, at the seat of general church business; and when said bonds are filed and said certificates recorded said trustee or assistant trustees may receive property, real or personal, by gift, donation, bequest, or in any manner not incompatible with the principles of righteousness or the rules of justice, inasmuch as the same shall be used, managed, or disposed of for the benefit, improvement, erection of houses for public worship and instruction, and the well-being of said church.

(552.) SEC. 3. And be it further ordained: That, as said church holds the constitutional and original right, in common with all civil and religious communities, "to worship God according to the dictates of conscience;" to reverence communion agreeably to the principles of truth, and to solemnize marriage compatible with the revelations of Jesus Christ; for the security and full enjoyment of all blessings and privileges embodied in the religion of Jesus Christ free to all; it is also declared that said church does and shall possess and enjoy continually the power and authority, in and of itself, to originate, make, pass, and establish rules, regula-
11 tions, ordinances, laws, customs, and criterions for the good order, safety, government, conveniences, comfort, and control of said church, and for the punishment or forgiveness of all offenses relative to fellowship, according to church covenants; that the pursuit of bliss and the enjoyment of life, in every capacity of public association and domestic happiness, temporal expansion, or spiritual increase upon the earth may not legally be questioned: Provided, however, that each and every act or practice so established or adopted for law or custom shall relate to solemnities, sacraments, ceremonies, consecrations, endowments, tithings, marriages, fellowship, or the religious duties of man to his Maker, inasmuch as the doctrines, principles, practices, or performances support virtue and increase morality, and are not inconsistent with or repugnant to the Constitution of the United States or of this State, and are founded in the revelations of the Lord.

(553) SEC. 4. And be it further ordained: That said church shall keep, at every full organized branch or stake, a registry of marriages, births, and deaths, free for the inspection of all members, and for their benefit.

(554) SEC. 5. And be it further ordained: That the presidency of said church shall fill all vacancies of the assistant trustees, necessary to be filled, until superseded by the conference of said church.

(555) SEC. 6. Be it further ordained: That no assistant trustee or trustees shall transact business in relation to buying, selling, or otherwise disposing of church property, without the consent or approval of the trustee in trust of said church.

(Endorsed:) Title court and cause. Complaint filed July 30th, 1887.

E. T. SPRAGUE, *Clerk.*

12 In the supreme court of the Territory of Utah.

UNITED STATES OF AMERICA, PLAINTIFF,
vs.
THE LATE CORPORATION OF THE CHURCH OF Jesus Christ of Latter-Day Saints, John Taylor, late trustee in trust, and Wilford Woodruff, Lorenzo Snow, Erastus Snow, Franklin D. Richards, Brigham Young, Moses Thatcher, Francis M. Lyman, John Henry Smith, George Teasdale, Heber J. Grant, and John W. Taylor, late assistant trustees, defendants.

Now comes the said defendants, Wilford Woodruff, Lorenzo Snow, Erastus Snow, Franklin D. Richards, Brigham Young, Moses Thatcher, Francis M. Lyman, John Henry Smith, Heber J. Grant, and John W. Taylor, and for their separate, joint, and several answers to the bill of complaint of plaintiff—

Deny that said defendant, the Church of Jesus Christ of Latter-Day Saints, on the 28th day of February, 1887, or at any other period after July 1st, 1862, was known or existed as a corporation.

Deny that the said John Taylor, on or immediately before the 19th day of February, 1887, was or ever had been trustee in trust of said corporation; or that said Wilford Woodruff, Lorenzo Snow, Erastus Snow, Franklin D. Richards, Brigham Young, Moses Thatcher, Francis M. Lyman, John Henry Smith, George Teasdale, Heber J. Grant, and
13 John W. Taylor, or either of them, were or ever had been assistant trustees of said alleged corporation, the Church of Jesus Christ of Latter-Day Saints.

Defendants deny that under or by virtue of the said act of incorporation set forth in paragraph one of plaintiff's bill of complaint, that said church did buy, acquire or hold large or any amounts of real estate or personal property, of great or any value whatever, in the Territory of Utah, or elsewhere, after the 1st day of July, 1862.

Defendants deny that said alleged defendant corporation owned or held real estate of the value of two million dollars, or any other sum, or personal estate of the value of one million dollars, or any other sum, on the 19th day of February, 1887, or which said defendants now, or at any other time, in violation of the laws of the United States or otherwise, still claim to hold or own.

Defendants deny that the alleged corporation of the Church of Jesus Christ of Latter-Day Saints, from its organization until the 19th day of February, 1887, was a corporation for religious, charitable, or other purposes, or that the said alleged church was, on the date last aforesaid, a corporation at all.

Defendants deny that by virtue of the 3rd section of the act of Congress dated July 1st, 1862, and reënacted as section 1890 of the Revised Statutes of the United States, all or any corporations or associations for religious or charitable purposes, or especially the defendant corporation,
14 was forbidden to acquire or hold real estate in any Terrritory, during the existence of the Territorial government, of greater value than

fifty thousand dollars. Deny that by said or any act of Congress said defendant corporation is limited in its right to acquire or hold real property in any amount.

Defendants deny that of the real estate held by the alleged corporation the Church of Jesus Christ of Latter-Day Saints, on the 19th day of February, 1887, more than fifty thousand dollars in value, or any other amount, had been acquired or held since the 1st day of July, 1862. Deny, on information and belief, that said alleged corporation has any real estate whatever.

Defendants deny that by virtue of any premises in plaintiff's bill of complaint, or otherwise, the real estate referred to and stated in paragraph four of the complaint, which, on or before the 19th day of February, 1887, was owned or held by said alleged corporation, the Church of Jesus Christ of Latter-Day Saints, was or is subject to escheat to the United States.

Defendants deny that on the 19th day of February, 1887, the charter or act of incorporation of the alleged corporation, the Church of Jesus Christ of Latter-Day Saints, was disapproved, repealed, or annul'ed by the Congress of the United States, or that the said alleged corporation was thereby dissolved. Deny that all or any of the real estate owned or occupied by said alleged corporation, in excess of fifty thousand dollars, which was not on the 19th day of February, 1887, held or occupied as buildings or ground appurtenant thereto for the purpose of the worship of God, or parsonage connected therewith, or burial ground, was
15 or is subject to escheat to the United States.

Defendants deny that the said alleged corporation, the Church of Jesus Christ of Latter-Day Saints, or the successor of the said John Taylor, as trustee in trust, and Wilford Woodruff, Lorenzo Snow, Erastus Snow, Franklin B. Richards, Brigham Young, Moses Thatcher, Francis M. Lyman, John Henry Smith, George Teasdale, Heber J. Grant, and John W. Taylor, assistant trustees, or otherwise, or either or any one of said persons or parties, wrongfully, or in violation of the laws of the United States, or otherwise, claim to hold or do exercise the powers which were held or exercised by the said alleged corporation, the Church of Jesus Christ of Latter-Day Saints, or are unlawfully or otherwise possessing or using the real estate referred to in the fourth paragraph of plaintiff's bill of complaint; or that they, or either of them, are receiving or unlawfully applying to its or their own use, all or any of the rents, issues, or profits thereof; and deny that they, or either of them, falsely or wrongfully, or otherwise, claim the right to sell, use or dispose of said property.

Defendants deny that since the 19th day of February, 1887, there has been, or is, no person lawfully authorized to take charge, manage, preserve, or control the property, real and personal, which, on or before the day last aforesaid, was owned, held, possessed, or used by said alleged corporation, the Church of Jesus Christ of Latter-Day Saints, or that by reason thereof all of said property, as referred to in the third paragraph of said bill of complaint, is subject to irreparable or irremediable loss or destruction.

16 Further answering the bill of complaint of plaintiff, defendants deny each, every, and all the allegations in plaintiff's bill of complaint.

Further answering the complaint of plaintiff, and for a separate defense thereto, said defendants, Wilford Woodruff, Lorenzo Snow, Erastus Snow, Franklin D. Richards, Brigham Young, Moses Thatcher, Francis M. Lyman, John Henry Smith, Heber J. Grant, and John W. Taylor, show unto this court, that the corporation of the Church of Jesus Christ of Latter-Day Saints was, by law, dissolved on the 1st day of July, 1862, and that from that period to the present said corporation has ceased to exist. That the Church of Jesus Christ of Latter-Day Saints is, and has been since July 1st, 1862, a voluntary religious and charitable association, composed of numerous members and congregations, and that the objects of said association are the dissemination of the principles of the gospel as taught by Our Savior Jesus Christ, and in aiding the poor and incompetent, and in providing for the sustenance and wants. That its purposes and objects are purely religious and charitable, and as such it has at all times and does now, receive donations from its members in limited amounts, which are used for the sole purposes aforesaid.

That as such society or association it has held, through its trustee, from time to time its real and personal property, and has from time to time used and disposed of portions of the same.

17 That the late John Taylor, president of the Church of Jesus Christ of Latter-Day Saints, was and had been for about ten years last past, and up to July 25th, 1887, the sole and only trustee of said society or church. That said John Taylor deceased on the date last aforesaid, and that since that period there has been no trustee of said church or association except as hereinafter set forth. That said John Taylor was elected by the Latter-Day Saints at their annual conference as trustee in trust for the body of religious worshippers called the Church of Jesus Christ of Latter-Day Saints, and in no other capacity, and not as trustee of said or any corporation, and these respondents and defendants were named and elected as his councillors and not otherwise; and that they nor either of them were not, nor never have been assistant trustees to the said John Taylor or any other person for and on behalf of said alleged corporation.

Defendants further allege that they nor either of them ever had, held, or pretended to have or hold any of the means or property of said association or church, up to the time of the decease of said John Taylor; nor have they now any control or authority over the same further than being prominent members of said church, but said property, real and personal, is in the hands of its trustees hereinafter named.

That said John Taylor, as trustee in trust, up to date of his death, had the sole management and control of said real and personal property, and

18 on or before the 28th day of February 1887, as defendants are informed and believe, the said trustee in trust disposed of all and singular the personal property of said association, save sufficient to pay its debts, which amount so reserved is unknown to these defendants, and on information and belief they allege it has been used for the purposes for which it was reserved.

Defendants further allege, that on or about the 8th day of April, 1887, pursuant to acts of Congress in that behalf, the authority of said church nominated, and the court exercising probate powers in the county

of Salt Lake and Territory of Utah appointed, three trustees, namely, William B. Preston, Robert T. Burton, and John R. Winder, to hold the real property of said church, and that since their said appointment all the real property in the said Territory that is owned by said church in the aggregate, has been deeded to said trustees, and they now hold, occupy, and possess the same, which is described as follows, to wit: All of block eighty-seven, Plat A, Salt Lake City survey, in Salt Lake County, Utah Territory, on which stands its temple and houses of worship; also the following, commencing four rods north of the southwest corner of lot four, in block eighty-eight, Plat A, Salt Lake City survey, thence north 26 rods; thence east 20 rods; thence south 22½ rods; thence west 14 rods; thence south 3½ rods; thence west 6 rods, to the place of beginning; containing 2 $\frac{67}{100}$ acres. Also all of the following part of lot 6, in block seventy-five, Plat A, Salt Lake City survey, bounded as follows:
19 Commencing at the northeast corner of said lot; thence south 10 rods; thence west 18 rods; thence north 10 rods; thence east 18 rods to the place of beginning.

That all the real property now owned by said church, and which is in the hands of said trustees, was acquired and held by said church before July 1st, 1862, save and except one of the aforesaid pieces, namely, the last above described, which said last named lot or piece of ground is necessary for the convenience and use of said religious society, and is and has at all times been used as a parsonage and offices connected therewith, and not otherwise.

That said society or church has no other real property, and no personal property save that which has been from time to time donated by the members of said church, and which is held and controlled by said trustees last above named for the use of said church in building and caring for its houses of worship and in maintaining and supporting the poor.

Further answering the complaint of plaintiff, defendants allege that all the real property now belonging to said church or association has been held, owned, and controlled by it, through its trustees, for a period of more than five years next preceding the commencement of this action.

Wherefore defendants pray to be hence dismissed with their costs herein expended and that each and every of the prayers of plaintiff be denied.

F. S. RICHARDS,
LE GRAND YOUNG,
Attorneys for Defendants.

LE GRAND YOUNG,
Counsel.

19½ Wilford Woodruff, Erastus Snow, F. D. Richards, Brigham Young, Moses Thatcher, F. M. Lyman, Heber J. Grant, John Henry Smith, defendants.

(Endorsed:) Title court and cause. Answer. Filed Oct. 1st, 1887. E. T. Sprague, clerk. Service of copy acknowledged Oct. 1st, 1887. Geo. S. Peters, U. S. att'y.

20 In the supreme court of the Territory of Utah.

No. of term in equity.

THE UNITED STATES OF AMERICA, PLAINTIFF,
vs.
THE LATE CORPORATION OF THE CHURCH OF Jesus Christ of Latter-Day Saints, and John Taylor, late trustee in trust, and Wilford Woodruff, Lorenzo Snow, Erastus Snow, Franklin D. Richards, Brigham Young, Moses Thatcher, Francis M. Lyman, John Henry Smith, George Teasdale, Heber J. Grant, and John W. Taylor, late assistant trustees in trust of said corporation, defendants.

The answer of the corporation of the Church of Jesus Christ of Latter-Day Saints to plaintiff's complaint.

The corporation of the Church of Jesus Christ of Latter-Day Saints, defendant in plaintiff's complaint, now and at all times hereafter saving and reserving unto itself all benefit and advantage of exception which can or may be had or taken to the many errors, uncertainties, and other imperfections of the said bill of complaint of the United States of America, for its several separate answers thereunto, or to so much or such parts thereof as said defendant is advised it is material or necessary to make answer unto, answering says:

First. Said defendant avers that on the 4th day of February, A. D. 1851, the assembly of the provisional government of the State
21 of Deseret, which was afterwards organized as the Territory of Utah, passed and ordinance incorporating and granting corporate powers, rights, and privileges to the Church of Jesus Christ of Latter-Day Saints. That afterwards, on the 8th day of February, A. D. 1851, the said ordinance was duly approved, a copy of which said ordinance is hereby made part hereof and attached hereto as "Exhibit A." That afterwards, to wit, on October 4th, A. D. 1851, and act of the legislative assembly of the Territory of Utah was approved, adopting, legalizing, and validating all ordinances of the assembly of the provisional government of the State of Deseret, making the same, and all of them, laws of the Territory of Utah, a copy of which said act of the legislative assembly of the Territory of Utah is hereby made part hereof and attached hereto as Exhibit "B." That afterwards, to wit, on January 19th, A. D. 1855, and act of the legislative assembly of the Territory of Utah was approved, adopting, reënacting, and making valid the said ordinance of the assembly of the provisional government of the State of Deseret hereinabove set forth, which said act was entitled "An act in relation to the compilation and revision of the laws and resolutions in force in Utah Territory; their publication and distribution." That said ordinance, and said acts of the legislative assembly of the Territory of Utah constituted, and were, and are a contract by and between the Territorial government of the Territory of Utah and the United States of America, on the one part, and the persons accepting said corporate grant,

and becoming thereunder incorporators of the said defendant cor-
22 poration, the Church of Jesus Christ of Latter-Day Saints, on the other part; that by said ordinance and acts of said Territorial legislature, hereinabove set forth, the said corporation, defendant herein, had and possessed the power to acquire and hold real and personal property without limitation as to value and amount, for the purposes specified in its charter.

Second. Said corporation, defendant herein, further avers that in its corporate name it never acquired, owned, or held any real or personal property whatsoever, but that said defendant corporation, by virtue of and under the powers granted by said ordinance, did acquire and hold certain real and personal property through, and in the name of, a trustee in trust for said defendant corporation. That afterwards, to wit, on July 1st, A. D. 1862, a certain act of the Congress of the United States of America was duly approved, by the third section of which it was enacted and provided that it should not thereafter be lawful for any corporation or association for religious or charitable purposes to acquire or hold real estate in any Territory of the United States during the existence of the Territorial government of greater value than fifty thousand dollars, especially providing that existing vested rights in real estate should not be impaired by the provisions of said act, a copy of which said act of Congress is hereby made part hereof and attached hereto as Exhibit "C." And defendant avers that it was at the time of its creation, ever since has been, and still is, a corporation or association for religious or charitable purposes. That afterwards, to wit, on March 3rd, A. D. 1887, a certain act
23 of Congress of the United States of America took effect, by which the General Government of the United States of America claims, attempts, and purports to have disapproved and annulled the said ordinance of the assembly of the provisional government of the State of Deseret, and the said acts of the legislative assembly of the Territory of Utah hereinabove set forth and made a part hereof, and claims, attempts, and purports to have dissolved and disincorporated said defendant corporation; a copy of sections 13, 14, 17, and 26 of which said last-named act of Congress is hereby made part hereof and attached hereto as Exhibit "D." And said defendant corporation here now avers that the said last-named act of Congress, hereinabove set forth and referred to, or so much of said acts as attempt or pretend to dissolve the said defendant corporation, or to interfere with or limits its right to hold property, or which attempt to escheat the same, or to wind up its affairs were and are unconstitutional, invalid, and void. That said General Government of the United States of America has not now, and never has had or possessed, the power or right to repeal or annul the ordinance and acts creating said defendant corporation and granting unto it in perpetuity certain rights, powers, and privileges, nor any of them, the same being in the nature of contracts by and between the Territorial government of the Territory of Utah and the United States, on the one part, and the incorporators of said defendant corporation on the other part. That said defendant corporation, relying upon the said ordinance and acts of incorporation as contracts, in good faith acquired and obtained certain real and personal property, as
24 lawfully and justly it might, and held the same by a trustee in trust, as in said ordinance and acts of incorporation lawfully provided.

Third. Said defendant corporation avers that at the time the said act of Congress last hereinabove set forth, to wit, March 3rd, A. D. 1887, went into force and took effect the said defendant corporation, by and through certain trustees, held and owned three certain pieces, tracts, or parcels of real estate, and no more, which said three pieces, tracts, or parcels of real estate are described as follows, to wit:

All of block eighty-seven (87) in Plat "A," Salt Lake City survey, in Salt Lake County, Utah Territory. Commencing four (4) rods north of the southwest corner of lot four (4), block eighty-eight (88) Plat A, Salt Lake City survey; thence north twenty-six (26) rods; thence east twenty (20) rods; thence south twenty-two and one-half (22½) rods; thence west fourteen (14) rods; thence south three and one-half (3½) rods; thence west six (6) rods; to the place of beginning, containing two and 157–160 acres.

All of that part of lot six (6) in block seventy-five (75), Plat "A," Salt Lake City survey, bounded and described as follows, commencing at the northeast corner of said lot; thence south ten (10) rods; thence west seventeen (17) rods; thence north ten (10) rods; thence east seventeen (17) rods to the place of beginning.

And defendant further avers that it had acquired and owned and held two of said above-named tracts or parcels of real estate prior to the passage and approval of said act of Congress approved July 1st, A. D.
25 1862, to wit: The two pieces of real estate described as follows, to wit:

All of block eighty-seven (87) in Plat "A," Salt Lake City survey, in Salt Lake County, Utah Territory. Commencing four rods north of the southwest corner of lot four (4), block eighty-eight (88), Plat "A," Salt Lake City survey; thence north twenty-six (26) rods; thence east twenty (20) rods; thence south twenty-two and one-half (22½) rods; thence west fourteen (14) rods; thence south three and one-half (3½) rods; thence west six (6) rods; to the place of beginning, containing two and 157–160 acres.

That the piece of real estate first above described, to wit: All of block eighty-seven (87) in Plat A, Salt Lake City survey, was on the 19th day of February, 1887, and ever since the year 1850 has been and now is used and occupied exclusively for purposes of the worship of God.

Defendant further avers that the only piece, tract or parcel of real estate that is owned and held by and through trustee at the time the said act of Congress of March 3rd, A. D. 1887, took effect which had been acquired by said defendant corporation subsequent to the passage and approval of the said act of Congress of July 1st, A. D. 1862, was and is the tract or parcel of real estate described as follows, to wit:

All of that part of lot six (6) in block seventy-five (75) Plat "A," Salt Lake City survey, bounded and described as follows, commencing at the northeast corner of said lot, thence south ten (10) rods; thence west seventeen (17) rods; thence north ten (10) rods; thence east seventeen (17) rods; to the place of beginning.

26 Which said piece, tract, or parcel of real estate the said *said* defendant acquired, held, and possessed more than five years, to wit, nine years prior to the institution of this suit.

And defendant further avers that the last above-described tract of real estate was at the time said act of Congress of March 3rd, A. D. 1887,

took effect, and always since it was acquired by said corporation has been, and still is, used and occupied only and solely as parsonage property, and that the same was and is necessary for the convenience and use of the congregation, church, or religious society using the same as its parsonage.

Said defendant corporation further avers that since the time of its creation as such corporation it has acquired, owned, and held divers and sundry other tracts and parcels of real estate; but that long prior to the taking effect of the said act of Congress of March 3rd, A. D. 1887, the said defendant corporation, as it lawfully might, had sold, conveyed, transferred, and disposed of all of its said tracts and parcels of real estate by it at any time held and owned, other than the three pieces, tracts, or parcels of real estate hereinabove described.

Fourth. Said defendant corporation further avers that after the passage and taking effect of the said act of Congress of March 3rd, A. D. 1887, under, in pursuance of, and in obedience to the requirements of the 26th section of said act, through the proper authorities of the Church of
27 Jesus Christ of Latter-Day Saints, it did apply to the proper court exercising probate powers in the said Territory of Utah, to wit, the probate court in and for Salt Lake County, in said Territory, for the appointment of three trustees to take the title to, and have and hold, the said three tracts or parcels of real estate hereinabove described. That the said court did, pursuant to the said 26th section of said act of Congress of March 3rd, A. D. 1887, on the 19th day of May, 1887, appoint the following named three trustees, to wit, William B. Preston, Robert T. Burton, and John R. Winder, to take title and to have and to hold the said three tracts or parcels of real estate hereinabove described, and that afterwards the said three tracts or parcels of real estate hereinabove described, with the exception of a part of lot six (6), in block seventy-five (75), Plat A, Salt Lake City survey, bounded and described as follows: Commencing at a point ten (10) rods west of the northeast corner of said lot and running thence south ten (10) rods; thence west seven (7) rods; thence north (ten) 10 rods; thence east seven (7) rods, to the place of beginning; were duly and legally deeded, conveyed, and transferred to said trustees so appointed as aforesaid, copies of which said deeds of conveyance are hereby made part hereof and attached hereto as Exhibits "E," "F," and "G."

That the said tract last above described, being seven by ten rods, is now held by Theodore McKean in trust for said defendant corporation and should have been included in his conveyance to said trustees, Preston, Burton, and Winder; but through an oversight and mistake on the part of the draftsman of said deed was, until this date unknown to the
28 parties thereto, erroneously omitted therefrom.

And said defendant corporation here now avers that since the conveyance of said real estate as hereinabove set forth to said trustees, so appointed by the probate court as aforesaid, it has not held or owned, and does not now hold or own, any real estate whatsoever.

Said defendant corporation further avers that John Taylor, now deceased, was the late trustee in trust, authorized and empowered by said defendant corporation, pursuant to the law of its incorporation, to acquire, own, or hold real estate or personal property in trust for said defendant corporation; that said John Taylor departed this life on the 25th day of July, A. D.

1887, and that since his death no successor as trustee in trust has ever been appointed, elected, or chosen by said defendant corporation as trust in trust to acquire, own, or hold in trust for said defendant corporation any real or personal property.

Fifth. Said defendant corporation further avers that it is not true, as averred in the eighth paragraph of plaintiff's complaint, that the charter and act of incorporation of defendant was disapproved, repealed, and annulled by the Congress of the United States on the 19th day of February, 1887, but, on the contrary, that even if the said act of Congress was and is valid and binding, nevertheless the same did not go into force and take effect until the 3rd day of March, A. D. 1887.

And defendant further avers that prior to February 28th, 1887, it
29 had, as such corporation, as it lawfully might by the powers granted to it by its acts of incorporation, acquired and held from time to time certain personal property, goods, and chattels, all of which it had acquired, held, and used solely and only for charitable and religious purposes; that on the 28th day of February, A. D. 1887, it still held and owned certain personal property, goods, and chattels donated to it by the members of said church and friends thereof, solely and only for use and distribution for charitable and religious purposes; that defendant at all times, from the time of its creation as a corporation up to February 28th, 1887, held whatever personal property belonged to it not in its corporate name, but in the name of a trustee in trust; that on February 28th, 1887, John Taylor, who then held all the personal property, moneys, stocks, and bonds belonging to said defendant corporation, as trustee in trust for said defendant, by and with the consent and approval of defendant, donated, transferred, and conveyed all of said personal property, moneys, stocks, and bonds held by him belonging to said defendant corporation, after setting apart and reserving certain moneys and stocks then held by him, sufficient in amount and necessary for the payment of the then existing indebtedness of said defendant corporation, to certain ecclesiastical corporations created and existing under and by virtue of the laws of the Territory of Utah, to be devoted by said ecclesiastical corporations solely and only to charitable and religious uses and purposes; that said conveyance of said personal property was made by said Taylor by an instrument in writing, and that, pursuant to said instrument in writing, said Taylor, as
30 trustee in trust for said defendant corporation, did deliver to the said various ecclesiastical corporations named in said instrument in writing the said personal property in said instrument mentioned and described; a copy of which said instrument selling, conveying, and transferring said personal property to said ecclesiastical corporations is hereby made part hereof and attached hereto as Exhibit H.

Wherefore defendant avers that at the time said act of Congress of March 3rd, A. D. 1887, went into force and took effect, this defendant corporation did not own, possess, or hold any personal property other than the mere furniture, fixtures, and implements of and pertaining to its houses of worship and parsonage. And said defendant corporation here now expressly and specifically denies each and every averment and allegation of plaintiff's complaint not hereinabove admitted.

Wherefore and by reason of the facts herein set forth, said defendant corporation prays the court that the prayer of plaintiff in its said com-

plaint be denied, and that upon the final hearing of this cause a decree may be rendered and entered by this court in favor of this defendant corporation, and that said defendant corporation may be dismissed hence with its proper costs and charges in this behalf laid out and expended.

And defendants will ever pray.

JAMES O. BROADHEAD,
J. E. MCDONALD,
FRANKLIN S. RICHARDS,
LE GRAND YOUNG,
Solicitors for said Defendant Corporation.

31 EXHIBIT A.

An ordinance incorporating the Church of Jesus Christ of Latter-Day Saints.

SEC. 1. Be it ordained by the general assembly of the State of Deseret: That all that portion of the inhabitants of said State which now are, or hereafter may become, residents therein, and which are known and distinguished as "The Church of Jesus Christ of Latter-Day Saints," are hereby incorporated, constituted, made and declared a body corporate, with perpetual succession, under the original name and style of "The Church of Jesus Christ of Latter-Day Saints," as now organized, with full power and authority to sue and be sued, defend and be defended, in all courts of law or equity in this State; to establish, order, and regulate worship, and to hold and occupy real and personal estate, and have and use a seal, which they may alter at pleasure.

SEC. 2. And be it further ordained that such body or church as a religious society may, at a general or special conference, elect one "trustee in trust," and not to exceed twelve assistant trustees, to receive, hold, buy, sell, manage, use, and control the real and personal property of said church, which said property shall be free from taxation; which trustee and assistant trustees, when elected or appointed, shall give bonds with approved security, in whatever sum the said conference may deem sufficient, for the faithful performance of their several duties; which said bonds
32 when approved, shall be filed in the general church recorder's office, at the seat of general church business, when said bonds are approved by said conference; and said trustee and assistant trustees shall continue in office during the pleasure of said church; and there shall also be made, by the clerk of the conference of said church, a certificate of such election or appointment of said trustee and assistant trustees, which shall be recorded in the general church recorder's office, at the seat of general church business; and when said bonds are filed, and said certificates recorded, said trustee or assistant trustees may receive property, real or personal, by gift, donation, bequest, or in any manner not incompatible with the principles of righteousness or the rules of justice; inasmuch as the same shall be used, managed or disposed of for the benefit, improvement, erection of houses for public worship and instruction, and the well-being of said church.

SEC. 3. And be it further ordained that, as said church holds the constitutional and original right, in common with all civil and religious communities, "to worship God according to the dictates of conscience;"

to reverence communion agreeably to the principles of truth, and to solemnize marriage compatible with the revelations of Jesus Christ; for the security and full enjoyment of all blessings and privileges, embodied in the religion of Jesus Christ free to all; it is also declared, that said
33 church does, and shall possess and enjoy continually, the power and authority, in and of itself, to originate, make, pass, and establish rules, regulations, ordinances, laws, customs, and criterions, for the good order, safety, government, conveniences, comfort, and control of said church, and for the punishment or forgiveness of all offenses, relative to fellowship, according to church covenants; that the pursuit of bliss, and the enjoyment of life, in every capacity of public association and domestic happiness, temporal expansion, or spiritual increase upon earth, may not be legally questioned: Provided, however, that each and every act, or practice so established or adopted for law or custom shall relate to solemnites, sacraments, ceremonies, consecrations, endownments, tithings, marriages, fellowship, or the religious duties of man to his Maker; inasmuch as the doctrines, principles, practices, or performances support virtue, and increase morality, and are not inconsistent with, or repugnant to, the Constitution of the United States, or of this State, and are founded in the revelations of the Lord.

SEC. 4. And be it further ordained that said church shall keep, at every full organized branch or stake, a registry of marriages, births, and deaths, free for the inspection of all members and for their benefit.

SEC. 5. And be it further ordained that the presidency of said church shall fill all vacancies of the assistant trustees, necessary to be filled,
34 until superseded by the conference of said church.

SEC. 6. Be it further ordained that no assistant trustee or trustees shall transact business in relation to buying, selling, or otherwise disposing of church property without the consent or approval of the trustee in trust of said church.

Approved February 8, 1851.

35 EXHIBIT B.

Joint resolution legalizing the laws of the provisional government of the State of Deseret.

(1) *Resolved by the legislative assembly of the Territory of Utah*, That the laws heretofore passed by the provisional government of the State of Deseret, and which do not conflict with the "organic act" of said Territory be, and the same are hereby, declared to be legal, and in full force and virtue, and shall so remain until superseded by the action of the legislative assembly of the Territory of Utah.

Approved October 4th, 1851.

EXHIBIT C.

An act to punish and prevent the practice of polygamy in the Territories of the United States and other places, and disapproving and annulling certain acts of the legislative assembly of the Territory of Utah.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That every person having a hus-

band or wife living who shall marry any other person, whether married or single, in a Territory of the United States or other place over which the United States have exclusive jurisdiction shall, except in the cases
36 specified in the proviso to this section, be adjudged guilty of bigamy, and upon conviction thereof, shall be punished by a fine not exceeding five hundred dollars and by imprisonment for a term not exceeding five years: Provided, nevertheless, that this section shall not extend to any person by reason of any former marriage whose husband or wife by such marriage shall have been absent for five successive years without being known to such person within that time to be living; nor to any person by reason of any former marriage which shall have been dissolved by the decree of a competent court; nor to any person by reason of any former marriage which shall have been annulled or pronounced void by the sentence or decree of a competent court on the ground of the nullity of the marriage contract.

SEC. 2. And be it further enacted that the following ordinance of the provisional government of the State of Deseret, so called, namely, "An ordinance incorporating the Church of Jesus Christ of Latter-Day Saints," passed February 8th, in the year eighteen hundred and fifty-one and adopted, rëenacted, and made valid by the governor and legislative assembly of the Territory of Utah by an act passed January 19th, in the year eighteen hundred and fifty-five, entitled "An act in relation to the compilation and revision of the laws and resolutions in force in Utah Territory; their publication and distribution," and all other acts and parts of acts heretofore passed by the said legislative assembly of the Territory of Utah which established, support, maintain, shield, or countenance polygamy be, and the same are, disapproved and annulled: Provided,
37 that this act shall be limited and construed as not to affect or interfere with the right of property legally acquired under the ordinance heretofore mentioned, nor with the right "to worship God according to the dictates of conscience," but only to annul all acts and laws which establish, maintain, protect, or countenance the practive of polygamy, evasively called spiritual marriage, however disguised by legal or ecclesiastical solemnities, sacraments, ceremonies, consecrations, or other contrivances.

SEC. 3. And be it further enacted that it shall not be lawful for any corporation or association for religious or charitable purposes to acquire or hold real estate in any Territory of the United States during the existence of the Territorial government of a greater value than fifty thousand dollars; and all real estate acquired or held by any such corporation or association contrary to the provisions of this act shall be forfeited and escheat to the United States: Provided, that existing vested rights in real estate shall not be impaired by the provisions of this section.

Approved July 1st, 1862.

38 EXHIBIT D.

Sections 13, 14, 17, and 26 of an act to amend an act entitled "An act to amend section fifty-three hundred and fifty-two of the Revised Statutes of the United States in reference to bigamy, and for other purposes," approved March 22nd, eighteen hundred and eighty-two.

SEC. 13. That it shall be the duty of the Attorney-General of the United States to institute and prosecute proceedings to forfeit and escheat to the

United States the property of corporations obtained or held in violation of section 3 of the act of Congress approved the 1st day of July, 1862, entitled "An act to punish and prevent the practice of polygamy in the Territories of the United States and other places, and disapproving and annulling certain acts of the legislative assembly of the Territory of Utah," or in violation of section eighteen hundred and ninety of the Revised Statutes of the United States, and all such property so forfeited and escheated to the United States shall be disposed of by the Secretary of the Interior, and the proceeds thereof applied to the use and benefit of the common schools in the Territory in which such property may be: Provided, That no building, or the grounds appurtenant thereto, which is held and occupied exclusively for purposes of the worship of God or parsonage connected therewith or burial ground shall be forfeited.

SEC. 14. That in any proceeding for the enforcement of the provisions of law against corporations or associations acquiring or holding property in any Territory of the United States in excess of the amount limited by law, the court before which such proceeding may be instituted shall have power in a summary way to compel the production of all books, records, papers, and documents of or belonging to any trustee or person holding or controlling or managing property in which such corporation may have any right, title, or interest whatever.

SEC. 17. That the acts of the legislative assembly of the Territory of Utah incorporating, continuing, or providing for the corporation known as the Church of Jesus Christ of Latter-Day Saints, and the ordinance of the so-called general assembly of the State of Deseret incorporating the Church of Jesus Christ of Latter-Day Saints, so far as the same may now have legal force and validity, are hereby disapproved and annulled, and the said corporation, in so far as it may not have or pretend to have any legal existance, is hereby dissolved; that it shall be the duty of the Attorney-General of the United States to cause such proceedings to be taken in the supreme court of the Territory of Utsh as shall be proper to execute the foregoing provisions of this section, and to wind up the affairs of said corporation conformably to law; and in such proceedings the court shall have power, and it shall be its duty, to make such decree or decrees as shall be proper to effectuate the transfer of the title to real property now held and used by said corporation for places of worship and parsonages connected therewith and burial grounds, and of the description mentioned in the provisio to section thirteen of this act, and in section twenty-six of this act, to the respective trustees mentioned in section twenty-six of this act; and for the purposes of this section said court shall have all the powers of a court of equity.

SEC. 26. That all religious societies, sects, and congregations shall have the right to have and to hold, through trustees appointed by any court exercising probate powers in a Territory, only on the nomination of the authorities of such society, sect, or congregation, so much real property for the erection or use of houses of worship, and for such parsonages and burial grounds as shall be necessary for the convenience and use of the several congregations of such religious society, sect, or congregation.

Exhibit E.

Tnis indenture, made on this 30th day of June in the year of our Lord one thousand eight hundred and eighty-seven, by and between John Taylor, trust in trust of that certain body of religious worshippers called and known as the Church of Jesus Christ of Latter-Day Saints, party of the first part, and William B. Preston, presiding bishop of said church, and his two counsellors, Robert T. Burton and John R. Winder, parties of the second part:

Whereas, by and act of Congress, entitled "An act to amend an act entitled an act to amend section 5352 of the Revised Statutes of the United States in reference to bigamy and polygamy, and for other purposes," approved March 3rd, 1887, it is among other things provided

"that, all religious societies, sects, and congregations shall have
41 the right to have and to hold through trustees appointed by any court exercising probate powers in a Territory, only on the nomination of the authorities of such society, sect, or congregation, so much real property for the erection or use of houses of worship and for such parsonages and burial grounds as shall be necessary for the convenience and use of such religious society, sect, or congregation;" and

Whereas, on the 7th day of April in the year of our Lord eighteen hundred and eighty-four, at a general conference of said church duly assembled at Provo City, in Utah County, Utah Territory, the authorities of said church by unanamous vote were then and there requested to name and nominate as the trustees to hold certain real property located in Salt Lake City, Utah Territory, belonging to said body of religious worshippers, William B. Preston, presiding bishop of said church, and his two counsellors, Rober T. Burton and John R. Winder.

That, pursuant to such request and in harmony with said law, on the 19th day of May, 1887, John Taylor, president of said church, and his two counsellors, George Q. Cannon and Joseph F. Smith, who constitute what is known and called the first presidency of said Church of Jesus Christ of Latter-Day Saints, and who are the duly constituted authorities thereof, in a document duly executed and filed in the probate court of Salt Lake County, Utah Territory, May 19th, 1887, nominated and named as the trustees who hold the real property belonging to said church in said county the said parties hereto of the second part.

42 That, pursuant to such nomination and the filing of said paper, the probate court in and for said county, on being informed in the premises, and having been made fully acquainted with the facts, and especially with the one named, that said John Taylor, George Q. Cannon, and Joseph F. Smith constitute the first presidency of said church and are its duly acknowledged authorities, on the 19th day of May, 1887, in open court duly entered its decree and order appointing the said William B. Preston, presiding bishop of said church, and his two counsellors, Robert T. Burton, and John R. Winder, trustees, to hold the property as trustees that might be transferred to them, pursuant to the law aforesaid; and

The said appointees have received such appointment and are now ready to receive such trusts as may be imposed upon them by virtue of said nomination and order of appointment; and

Whereas, the said party of the first part has been for many years the trustee in trust of said body of religious worshippers, and has been so designated and

known, and as such has up to this time held certain property of said religious worshippers in trust for them, a part of which said property is hereinafter described; and that said body of religious worshippers are for the most part inhabitants of Utah Territory: and that said property is hereby conveyed to the said parties of the second part in trust for said beneficiaries, and on the trusts and limitations and with the reservations and powers hereinafter named.

43 Now, therefore, this indenture witnesseth:

That the party of the first part, in consideration of the premises and of the sum of one dollar to him in hand paid by the said parties of the second part, the receipt whereof is hereby acknowledged, has granted, bargained and sold, and by these presents does grant, bargain, sell and convey unto the said parties of the second part, as joint tenants and not as tenants in common, and to their successors duly appointed upon trust and to their assigns forever, the property above referred to and which is particularly described as follows, to wit:

All of block eighty-seven (87) in Plat A, Salt Lake City survey, in Salt Lake County, Utah Territory;

Together with and including all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, with all and singular the reversion and reversions, rents, issues and profits thereof;

To have and to hold the above granted and described premises and property unto the said parties of the second part, as joint tenants as aforesaid and to the survivors or survivor of them, and to their successors duly appointed and to their assigns forever, for the use, benefit, and behoof of that certain body of religious worshippers known and called the Church of Jesus Christ of Latter-Day Saints, and to and for such use as such church or its duly constituted authorities shall *name*, dictate, and appoint.

In case it shall or may at any time happen that there shall be a vacancy in the office of said trusteeship either by reason of death one of
44 the said parties of the second part or any other cause, it shall then and there be lawful for the authorities of said church to name, nominate and appoint some person or persons to fill such vacancy as may or shall from time to time be necessary; and in case all of said parties of second part or their successors shall at any time be deceased or incompetent for any cause to act or discharge said trust, the title to said property shall not be deemed to be in abeyance, but shall in such an event vest in the president of the Church of Jesus Christ of Latter-Day Saints, if there be one at that time; if not, in such person as shall be at that time deemed and acknowledged to be the head of said church by the members thereof; but upon the nomination and appointment of new trustees to fill the vacancy in such trusteeship, the president or leader in whom the title has vested shall, unless otherwise directed by the said Church of Jesus Christ of Latter-Day Saints, or the duly constituted authorities thereof, convey said premises and property to such newly appointed trustee or trustees who shall hold the same on the trusts and confidence hereby created and imposed.

The said parties of the second part hereby accept the trust herein set forth and agree to discharge the same according to the terms herein set forth.

In witness whereof, the said parties have all hereunto set their hands and seals this 30th day of June, 1887.

Signed, sealed, and delivered:

JOHN TAYLOR, [SEAL.]
[SEAL.]
[SEAL.]
[SEAL.]

In the presence of—
SAMUEL BATEMAN,
JAMES E. MALIN.

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45 UNITED STATES OF AMERICA,
Territory of Utah, County of Davis, ss:

On this 30th day of June, A. D. one thousand eight hundred and eighty-seven, personally appeared before me, Jos'ph Barton, a notary public in and for said county, duly appointed, commissioned and qualified, John Taylor, whose name is subscribed to the annexed instrument as first party thereto, personally known to me to be the same person described in and who executed the said annexed instrument as the party of the first part, and duly acknowledged to me that he executed the same freely and voluntarily, and for the uses and purposes therein mentioned.

In witness whereof I have hereunto set my hand and affixed my official seal, at my office in Kaysville City, Davis County, U. T., the day and year in this certificate first above written.

[NOTARIAL SEAL.] JOSEPH BARTON,
Notary Public.

46 EXHIBIT F.

This indenture, made on this second day of July, in the year of our Lord one thousand eight hundred and eighty-seven, by and between Robert T. Burton and his wife, Maria S. Burton, the parties of the first part, and William B. Preston, presiding bishop of the Church of Jesus Christ of Latter-Day Saints, and his two counsellors, Robert T. Burton and John R. Winder, parties of the second part.

Whereas, by an act of Congress, entitled "An act to amend an act entitled an act to amend section 5352 of the Revised Statutes of the United States in reference to bigamy and polygamy and for other purposes," approved March 3rd, 1887, it is among other things provided "That all religious societies, sects, and congregations shall have the right to have and to hold through trustees appointed by any court exercising probate powers in a Territory, only on the nomination of the authorities of such society, sect, or congregation, so much real property for the erection or use of houses of worship and for such parsonages and burial grounds as shall be necessary for the convenience and use of such religious society, sect, or congregation;" and

Whereas, on the 7th day of April, in the year of our Lord eighteen hundred and eighty-four, at a general conference of said church duly assembled at Provo City, in Utah County, Utah Territory, the authorities of said church by unanamous vote were then and there requested to name

and nominate as the trustees to hold certain real property located in
47 Salt Lake City, Utah Territory, belonging to said body of religious worshippers, William B. Preston, presiding bishop of said church and his two counsellors, Robert T. Burton, and John R. Winder.

That, pursuant to such request and in harmony with said law, on the 19th day of May, 1887, John Taylor, president of said church, and his two counsellors, George Q. Cannon and Joseph F. Smith, who constitute what is known and called the first presidency of said Church of Jesus Christ of Latter-Day Saints, and who are the duly constituted authorities thereof, in a document duly executed and filed in the probate court of Salt Lake County, Utah Territory, May 19th, 1887, nominated and named as the trustees to hold the real property belonging to said church in said county, the said parties hereto of the second part.

That, pursuant to such nomination and the filing of said paper, the probate court in and for said county, on being informed in the premises, and having been made fully acquainted with the facts, and especially with the one named, that said John Taylor, George Q. Cannon, and Joseph F. Smith constitutes the first presidency of said church and are its duly acknowledged authorities, on the 19th day of May, 1887, in open court, duly entered its decree and order appointing the said William B. Preston, presiding bishop of said church, and his two counsellors, Robert T. Burton and John R. Winder, trustees to hold the property as trustees that might be transferred to them, pursuant to the law aforesaid; and

The said appointees have received such appointment and are now
48 ready to receive such trusts as may be imposed upon them by virtue of said nomination and order of appointment; *a* and whereas the said Robert T. Burton, one of the parties of the first part, has been for many years a trustee holding certain real property for said religious worshippers in trust for them, which said property is hereinafter described:

Now, therefore, this indenture witnesseth:

That the parties of the first part, in consideration of the premises and of the sum of one dollar to them in hand paid by the said parties of the second part, the receipt whereof is hereby acknowledged, have granted, bargained, and sold, and by these presents do grant, bargain, sell, and convey unto the said parties of the second part, as joint tenants and not as tenants in common, and to their successors duly appointed upon trust and to their assigns forever, the property above referred to and which is particularly described as follows, to wit: Commencing four (4) rods north of the southwest corner of lot four (4), block eighty-eight (88), Plat "A," Salt Lake City survey; thence north twenty-six (26) rods, thence east twenty (20) rods, thence south twenty-two and one-half ($22\frac{1}{2}$) rods, thence west fourteen (14) rods, thence south three and one-half ($3\frac{1}{2}$) rods, thence west six (6) rods to the place of beginning, containing two and $\frac{57}{100}$ acres.

Together with and including all and singular tenements, hereditaments, and appurtenances thereunto belonging or in anywise appertaining, with all and singular the reversion and reversions, rents, issues, and profits thereof.

49 To have and to hold the above granted and described premises and property unto the said parties of the second part, as joint tenants as aforesaid, and to the survivors or survivor of them, and to their successors duly appointed and to their assigns forever, for the use,

benefit, and behoof of that certain body of religious worshippers known and called the Church of Jesus Christ of Latter-Day Saints, and to and for such use as such church or its daily constituted authorities shall name, dictate, and appoint.

In case it shall or may at any time happen that there shall be a vacancy in the office of said trusteeship, either by reason of the death of one of the said parties of the second part, or any other cause, it shall then and there be lawful for the authorities of said Church to name, nominate, and appoint some person or persons to fill such vacancy as may or shall from time to time be necessary; and in case all of said parties of the second part, or their successors, shall at any time be deceased or incompetent for any cause to act or discharge said trust, the title to said property shall not be deemed to be in abeyance, but shall in such an event vest in the president of said Church of Jesus Christ of Latter-Day Saints, if there is one at that time, if not in such person as shall be at that time deemed and acknowledged to be the head of said church by the members thereof; but upon the nomination and appointment of new trustees to fill the vacancy in such trusteeship the said president or leader in whom the title has vested shall, unless otherwise directed by the said Church of Jesus Christ of Latter-Day Saints or the duly constituted authorities thereof, convey said premises and property to such newly appointed trustee or trustees, who shall hold the same on the trusts and confidence hereby created and imposed.

The said parties of the second part hereby accept the trust hereby and herein set forth and agree to discharge the same according to the terms herein set forth.

In witness whereof, the said parties have all hereunto set their hands and seals this 2nd day of July, 1887.

ROBERT T. BURTON. [SEAL.]
MARIA S. BURTON. [SEAL.]

Signed, sealed and delivered in the presence of—
JOHN KIRKMAN.
WALTER MUSSER.

UNITED STATES OF AMERICA,
Territory of Utah, County of Salt Lake, ss.:

On this Second day of July, A. D. one thousand eight hundred and eighty-seven, before me, James Jack, a notary public, in and for Salt Lake County, in the Territory of Utah, duly appointed,, commissioned, and qualified, personally appeared Robert T. Burton and Maria S. Burton, his wife, whose names are subscribed to the annexed instrument as parties thereto, personally known to me to be the same persons described in and who executed the said annexed instrument, as parties thereto, who each of them acknowledged to me that they each of them, respectively, executed the same freely and voluntarily, and for the uses and purposes therein mentioned; and the said Maria S. Burton, wife of the aforesaid Robert T. Burton, on being examined by me separate and apart from and without the hearing of her said husband, and after being by me made acquainted with said conveyance and her rights of, in, and to said property, and particularly her right of dower therein, she then acknowledged to me that she executed the same understandingly, and

relinquished her dower in the real estate therein conveyed freely and voluntarily and without compulsion or undue influence on the part of her said husband, for the consideration named in said deed and for the uses and purposes therein named and that she does not wish to retract the execution thereof.

In witness whereof I have hereunto set my hand and affixed my notarial seal at my office in Salt Lake City, U. T., the day and year in this certificate first above written.

[NOTARIAL SEAL.] JAMES JACK,
Notary Public for Salt Lake County, U. T.

EXHIBIT G.

This indenture, made on this second day of July, in the year of our Lord one thousand eight hundred and eighty-seven, by and between Theodore McKean and his wife, Mary P. McKean, parties of the first part, and William B. Preston, presiding bishop of the Church of Jesus Christ of Latter-Day Saints, and his two counsellors, Robert T. Burton and John R. Winder, parties of the second part:

52 Whereas, by an act of Congress, entitled "An act to amend an act entitled 'An act to amend section 5352 of the Revised Statutes of the United States in reference to bigamy and polygamy and for other purposes,'" approved March 3rd, 1887, it is, among other things, provided, "That all religious societies, sects, and congregations shall have the right to have and to hold, through trustees appointed by any court exercising probate powers in a Territory, only on the nomination of the authorities of such society, sect, or congregation, so much real property for the erection or use of houses of worship and for such parsonages and burial grounds as shall be necessary for the convenience and use of such religious society, sect, or congregation;" and

Whereas, on the 7th day of April, in the year of our Lord eighteen hundred and eighty-four, at a general conference of said church, duly assembled at Provo City, in Utah County, Utah Territory, the authorities of said church, by unanimous vote, were then and there requested to name and nominate as the trustees to hold certain real property located in Salt Lake City, Utah Territory, belonging to said body of religious worshippers, William B. Preston, presiding bishop of said church, and his two counsellors, Robert T. Burton and John R. Winder.

That, pursuant to such request and in harmony with said law, on the 19th day of May, 1887, John Taylor, president of said church, and his two counsellors, George Q. Cannon and Joseph F. Smith, who

53 constitute what is known and called the first presidency of said Church of Jesus Christ of Latter-Day Saints, and who are the duly constituted authorities thereof, in a document duly executed and filed in the probate court of Salt Lake County, Utah Territory, May 19th, 1887, nominated and named as trustees to hold the real property belonging to said church in said county, the said parties hereto of the second part.

That, pursuant to such nomination and the filing of said paper, the probate court in and for said county, on being informed in the premises and having been made fully acquainted with the facts, and especially with the one named, that said John Taylor, George Q. Cannon and Joseph F.

Smith constitute the first presidency of said church and are its acknowledged authorities, on the 19th day of May, 1887, in open court, duly entered its decree and order appointing the said William B. Preston, presiding bishop of said church, and his two counsillors, Robert T. Burton and John R. Winder, trustees to hold the property as trustees that might be transferred to them, pursuant to the law aforesaid; and

The said appointees have received such appointment and are now ready to receive such trusts as may be imposed upon them by virtue of said nomination and order of appointment.

Now, therefore, this indenture witnesseth:

That the party of the first part, in consideration of the premises and of the sum of one dollar to them in hand paid by the said parties of the second part, the receipt whereof is hereby acknowledged, have granted, bargained and sold, and these presents do grant, bargain, sell, and con-
54 vey unto the said parties of the second part, as joint tenants and not as tenants in common, and to their successors, duly appointed upon trust, and to their assigns forever, the property particularly described as follows, to wit:

All of the east half of lot six (6) in block seventy-five (75), Plat A, Salt Lake City survey, and bounded as follows: Commencing at the northeast corner of said lot, thence south ten (10) rods, thence west ten (10) rods, thence north ten (10) rods, thence east ten (10) rods to the place of beginning.

Together with and including all and singular the tenements, hereditaments, and appurtenances thereunto belonging or in any wise appertaining, with all and singular the reversion and reversions, rents, issues, and profits thereof.

To have and to hold the above granted and described premises and property unto the said parties of the second part, as joint tenants as aforesaid, and to the survivors or survivor of them, and to their successors duly appointed, and to their assigns forever, for the use, benefit and behoof of the president or leader of that certain body of religious wor*his*ppers known and called the Church of Jesus Christ of Latter-Day Saints, for a residence or parsonage, and to and for such use as the president *of* leader of said church, by whatever name designated, shall name, dictate, and appoint.

In case it shall or may at any time happen that there shall be a vacancy in the office of said trusteeship, either by reason of the death of
55 one of the said parties of the second part, or any other cause, it shall then and there be lawful for the authorities of said church to name, nominate, and appoint some person or persons to fill such vacancy as may or shall from time to time be necessary; and in case all of said parties of the second part or their successors shall at any time be deceased or incompetent for any cause to act or discharge said trust, the title to said property shall not be deemed to be in abevance, but shall in such an event vest in the president of the Church of Jesus Christ of Latter-Day Saints, if there is one at that time; if not, in such person as shall be at that time deemed and acknowledged to be the head of said church by the members thereof; but upon the nomination and appointment of new trustees to fill the vacancy in such trusteeship, the said president or leader in whom

the title is vested shall, unless otherwise directed by the said church of Jesus Christ of Latter-Day Saints, or the duly constituted authorities thereof, convey said premises and property to such newly appointed trustee or trustees, who shall hold the same on the trusts and confidence hereby created and imposed.

The said parties of the second part hereby accept the trust hereby and herein set forth and agree to discharge the same according to the terms herein set forth.

In witness whereof the said parties have all hereunto set their hands and seals, this 2nd day of July, A. D. 1887.

THEODORE MCKEAN. [SEAL.]
MARY P. MCKEAN. [SEAL.]

Signed and delivered in presence of—
FREDERICK KESSLER.

56 UNITED STATES OF AMERICA,
Territory of Utah, County of Salt Lake, ss:

On this 2nd day of July, A. D. 1887, before me, James Jack, a notary public in and for Salt Lake County, in the Territory of Utah, duly appointed, commissioned, and qualified, personally appeared Theodore McKean and Mary P. McKean, his wife, whose names are subscribed to the annexed instrument as parties thereto, personally known to me to be the same persons described in and who executed the said annexed instrument as parties thereto, who each of them acknowledged to me that they each of them respectively executed the same freely and voluntarily and for the uses and purposes therein mentioned; and the said Mary P. McKean, wife of the aforesaid Theodore McKean, on being examined by me separate and apart from and without the hearing of her said husband, and after being by me made acquainted with said conveyance and her rights of and in and to said property, and particularly her right of dower therein, she then acknowledged to me that she executed the same understandingly and relinquished her dower in the real estate therein, conveyed freely and voluntarily and without compulsion or undue influence on the part of her said husband, for the consideration named in the said deed, and for the uses and purposes therein named, and that she does not wish to retract the execution thereof.

In witness whereof I have hereunto set my hand and affixed my notarial seal at my office, at Salt Lake City, U. T., the day and year in this certificate first above written.

[SEAL.]

JAMES JACK,
Notary Public, Salt Lake County, U. T.

57 EXHIBIT H.

SALT LAKE CITY, *February* 28th, 1887.

Whereas, by and with the consent of my brethren of the first presidency and the twelve apostles of the Church of Jesus Christ of Latter-Day Saints, and with the approval, so far as I have been able to lay the matter before them, of the members of said church, and in consideration of the rights and powers in me vested and of the reservations and the uses

to which the property herein named is to be put, I, John Taylor, trust in trust for the body of religious worshippers known and recognized as the Church of Jesus Christ of Latter-Day Saints, and president of said church, have, for the purpose of aiding the several stake organizations, concluded to convey to the respective corporations hereinafter named the personal property situated in the several counties of Utah hereinafter designated as the certain stakes of Zion.

Now, therefore, in consideration of the premises, and of the promise and agreement that the said grantees will faithfully carry out the trust and confidence herein and hereby imposed, and for other good and valuable consideration, and for the sum of one dollar to me in hand paid by each of the corporations named hereinafter, the receipt whereof is hereby acknowledged, I, John Taylor, trustee in trust for the body of religious worshippers known and recognized as the Church of Jesus Christ of Latter-Day Saints, have given, granted, and conveyed, and by these presents do give, grant, and convey unto those several certain ecclesiastical corporations existing under the laws of Utah the personal property existing in the several stakes of Zion in Utah Territory; which said corporations and stakes of Zion are designated and named as follows, to wit:

58

To the corporation called the Church Association of Cache, Stake of Zion, I hereby convey all the personal property located in Cache, Bear Lake, Bannock, and Oneida stakes held by me as such trustee, or owned by said church at this date, situated in Cache County, Utah, Bear Lake and Bingham, and Oneida counties, Idaho Territory.

2nd. To the corporation called the Church Association of Boxelder Stake of Zion, I hereby convey all the personal property located in said stake held by me as such trustee, or owned by said church at this date, which is within the territorial limits of Boxelder County, Utah Territory, and Cassia County, Idaho Territory.

3rd. To the corporation called the Church Association of Weber, Stake of Zion, I hereby convey all the personal property located in said stake, held by me at such trustee, or owned by said church at this date, which is within the territorial limits of Weber County, Utah Territory.

4th. To the corporation called the Church Association of Morgan, Stake of Zion, I hereby convey all the personal property located in said stake, held by me as such trustee, or owned by said church at this date, which is within the territorial limits of Morgan County, Utah Territory.

59

5th. To the corporation called the Church Association of Davis, Stake of Zion, I hereby give all the personal property located in said stake, held by me as such trustee, or owned by said church at this date, which is within the territorial limits of Davis County, Utah Territory.

6th. To the corporation called the Church Association of Summit, Stake of Zion, I hereby give all the personal property located in said stake, held by me as such trustee, or owned by said church at this date, which is within the territorial limits of Summit County, Utah Territory.

7th. To the corporation called the Church Association of Wasatch, Stake of Zion, I hereby give all the personal property located in said stake, held

by me as such trustee, or owned by said church at this date, which is within the territorial limits of Wasatch County, Utah Territory, or that belonging to that stake of Zion.

8th. To the corporation called the Church Association of the Salt Lake, Stake of Zion, I hereby give all the personal property located in said stake, held by me as such trustee, or owned by said church at this date, which is within the territorial limits of Salt Lake County, Utah Territory, provided this grant shall not be construed to pass the stocks in the several incorporated companies which I, as trustee in trust, now hold in said county.

9th. To the corporation called the Church Association of Tooele, Stake of Zion, I hereby give all the personal property located in said stake, held by me as such trustee, or owned by said church at this date, which
60 is within the territorial limits of Tooele County, Utah Territory.

10th. To the corporation called the Church Association of Juab, Stake of Zion, I hereby give all the personal property located in said stake, held by me as such trustee, or owned by said church at this date, which is within the territorial limits of Juab County, Utah Territory.

11th. To the corporation called the Church Association of Utah, Stake of Zion, I hereby give all the personal property located in said stake, held by me as such trustee, or owned by said church at this date, which is within the territorial limits of Utah County, Utah Territory; but this shall not be construed to pass the stocks in the incorporated companies which I, as trustee, now hold in said county.

12th. To the corporation called the Church Association of Sanpete, Stake of Zion, I hereby give all the personal property held by me as such trustee, or owned by said church at this date, located in said stake, which is within the territorial limits of Sanpete County, Utah Territory.

13th. To the corporation called the Church Association of the Uintah, Stake of Zion, I hereby give all the personal property held by me as such trustee, or owned by said church at this date, located in said stake, which is within the territorial limits of Uintah County, Utah Territory.

14th. To the corporation called the Church Association of Emery,
61 Stake of Zion, I hereby give all the personal property held by me as such trustee, or owned by said church at this date, located in said stake, which is within the territorial limits of Emery County, Utah Territory.

15th. To the corporation called the Church Association of Sevier Stake of Zion, I hereby give all the personal property held by me, as such trustee, or owned by said church at this date, located in said stake, which is within the territorial limits of Sevier and Piute counties in Utah Territory.

16th. To the corporation called the Church Association of Millard Stake of Zion, I hereby give all the personal property held by me, as such trustee, or owned by said church at this date, located in said stake, which is within the Territorial limits of Millard County, Utah Territory.

17th. To the corporation called the Church Association of Beaver Stake of Zion, I hereby give all the personal property held by me, as such trustee, or owned by said church at this date, located in said stake, which is within the territorial limits of Beaver County, Utah Territory.

18th. To the corporation called the Church Association of Panguitch Stake of Zion, I hereby give all the personal property held by me, as such trustee, or owned by said church at this date, located in said stake, which is within the territorial limits of Piute and Garfield counties, Utah Territory.

19th. To the corporation called the Church Association of San
62 Juan Stake of Zion, I hereby give all the personal property held by me as such trustee, or owned by said church at this date, located in said stake, which is within the territorial limits of San Juan County, Utah Territory.

20th. To the corporation called the Church Association of Parowan Stake of Zion, I hereby give all the personal property held by me as such trustee, or owned by said church at this date, located in said stake, which is within the limits of Iron County, Utah Territory.

21st. To the corporation called the Church Association of St. George Stake of Zion, I hereby give all the personal property held by me, as such trustee, or owned by said church at this date, and located in said stake, which is within the limits of Washington County, Utah Territory, and Lincoln County, State of Nevada.

22nd. To the corporation called the Church Association of Kanab Stake of Zion, I hereby give all the personal property held by me, as such trustee, or owned by said church at this date, and located in said stake, including the horses and cattle on the Pipe Spring Ranch.

63 The grant and transfer of property hereby made shall not be construed to cover any property hereafter to be acquired by me, as such trustee, or to be hereafter acquired by the said church in the several stakes aforesaid.

To have and to hold unto the said several stakes of Zion the personal property above referred to, and consisting of horses, cattle, sheep, swine, grain, hay, straw, flour, poultry and other personality of every nature and kind, save and except the cash or stocks as aforesaid, for the use and benefit of the members of the Church of Jesus Christ of Latter-Day Saints residing in the said several stakes, and for the building of houses of worship, and for such use as the said corporation shall from time to time devote said means to, or the income thereof, with full power in said corporation to use any of said property so conveyed to them hereby, for the building of houses of worship or temples, and the like, that may be outside of the Territorial limits of the stakes thus contributing, so that such houses and temples to which assistance may be given are erected for the worship of God in harmony with the established views and religious tenets of the Church of Jesus Christ of Latter-Day Saints.

I hereby appoint James Jack as my attorney and agent to fully carry out this conveyance, and to deliver the property aforesaid to the said corporation, or to their duly appointed agent or agents.

In witness whereof, I have hereunto set my hand and seal this day and year first above written.

JOHN TAYLOR, [SEAL.]
Trustee in Trust.

Attest:
THOMAS F. ROUECHE,
JOSEPH BARTON.

64 In the supreme court of Utah Territory.

THE UNITED STATES OF AMERICA, PLAINTIFF,
vs.
THE LATE CORPORATION OF THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS *et al.*, DEFENDANTS. } In equity.

The joint and several answer of William B. Preston, Robert T. Burton, and John R. Winder.

William B. Preston, Robert T. Burton and John R. Winder, made defendants in the above-entitled cause, now and at all times hereafter saving and reserving unto themselves jointly, and unto each of them severally, all benefit and advantage of exception which can or may be had or taken to the many errors, uncertainties, and other imperfections of the plaintiff's bill of complaint, jointly and severally for answer thereto, or to so much, or to such parts thereof, as these defendants, and each of them severally are advised is material or necessary to make answer unto, answering, say:

First. That on the 19th day of May A. D. 1887, the said defendants William B. Preston, Robert T. Burton, and John R. Winder were duly appointed by the probate court of Salt Lake County, Utah Ter-
65 ritory, trustees to take the title to, and have and hold the real estate belonging to the Church of Jesus Christ of Latter-Day Saints. That said appointment was made by said probate court on the nomination of the duly constituted authorities of said Church of Jesus Christ of Latter-Day Saints, in due form of law, under and in pursuance of an act of Congress, entitled "An act to amend an act entitled 'An act to amend section 5352 of the Revised Statutes of the United States, in reference to bigamy and for other purposes,'" approved March 22nd, 1882."

Second. That after the appointment of said defendants as such trustees as afores'id, to wit, on the 30th day of June A. D. 1887, the following described land and premises was duly and legally deeded, conveyed, and transferred to said defendants, as such trustees, to wit: All of block eighty-seven (87), Plat A, Salt Lake City survey, in Salt Lake County, Utah Territory.

That on the 2nd day of July, 1887, the following-described tracts of land and premises were duly and legally deeded, conveyed, and transferred to said defendants as such trustees so appointed as aforesaid, to wit: Commencing four (4) rods north of the southwest corner of lot four (4), block eighty-eight (88), Plat A, Salt Lake City survey; thence north twenty-six (26) rods; thence east twenty (20) rods; thence south twenty-two and one-half ($22\frac{1}{2}$) rods; thence west fourteen (14) rods; thence south three and one-half ($3\frac{1}{2}$) rods; thence west six (6) rods, to the place of beginning, containing two and $\frac{157}{160}$ acres.

Also all of the east half of lot six (6), in block seventy-five (75),
66 Plat A, Salt Lake City survey, and bounded as follows: Commencing at the northeast corner of sa'd lot, thence south ten (10) rods; thence west ten (10) rods; thence north ten (10) rods; thence east ten (10)

rods to the place of beginning. All of which will more fully appear from the records of the recorder's office of Salt Lake County, Utah Territory, where said deeds of transfer are duly recorded as provided by law.

Third. That upon the execution and delivery of the deeds of conveyance of said land and premises to the said defendants, William B. Preston, Robert T. Burton, and John R. Winder, as trustees as aforesaid, they entered upon and took possession of each and every of the parcels and tracts of land aforesaid, and have ever since held and now hold the legal title and possession thereof in trust for the said Church of Jesus Christ of Latter-Day Saints.

Fourth. The said defendants, and each of them, jointly and severally aver that they do not hold in trust or otherwise, or possess any other real or personal property of or belonging to said Church of Jesus Christ of Latter-Day Saints, save and except that which is hereinabove described, and a piece of the aforesaid lot six (6), in block seventy-five (75), Plat A, Salt Lake City survey, described as follows: Commencing at a point ten (10) rods west of the northeast corner of said lot and running thence south ten (10) rods; thence west seven (7) rods; thence north ten (10) rods; thence east seven (7) rods; which said piece of land was intended to be conveyed to these defendants as trustees aforesaid at the same time
67 and by the same deed as that which conveyed the east half of said lot to them; but the same was, by mistake of the draftsman of said deed, erroneously omitted therefrom.

Fifth. The said defendants, and each of them, jointly and severally aver, that they have carefully read and thoroughly understand the answer of the defendant corporation on file herein, and said defendants, and each of them, jointly and severally here now adopt said answer of said defendant corporation, and hereby incorporate the same into this their answer, as part thereof, with the same force and effect as if the same were here at large set forth. And said defendants, and each of them, severally aver that to the best of their knowledge, information, and belief, and to the best of the knowledge, information, and belief of each and every of them; each and all the allegations and averments of said answer of said defen't corporation, are true in substance and in matter of fact, as they verily believe.

Wherefore, and by reason of the facts herein set forth, said defendants pray the court that they may be dismissed hence with their proper costs and charges in this behalf laid out and expended.

JAMES O. BROADHEAD,
J. E. MCDONALD,
FRANKLIN S. RICHARDS,
LE GRAND YOUNG,
Solicitors for said Defendants.

(Endorsed:) Title, court, and cause. Answer of Preston, Burton & Winder. Filed Nov. 9, 1887. E. T. Sprague, clerk. Service of copy acknowledged. Geo. S. Peters, U. S. att'y.

68 In the supreme court of Utah Territory.

UNITED STATES OF AMERICA, PLAINTIFF,
vs.
THE LATE CORPORATION OF THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS, ET AL., DEFENDANTS. } In equity.

The joint and several answer of Wilford Woodruff, Lorenzo Snow, Erastus Snow, Franklin D. Richards, Brigham Young, Moses Thatcher, Francis M. Lyman, John Henry Smith, George Teasdale, Heber J. Grant, and John W. Taylor, to plaintiff's complaint.

Wilford Woodruff, Lorenzo Snow, Erastus Snow, Franklin D. Richards, Brigham Young, Moses Thatcher, Francis M. Lyman, John Henry Smith, George Teasdale, Heber J. Grant, and John W. Taylor, made defendants in said plaintiff's complaint, now and at all times hereafter saving and reserving unto themselves jointly, and unto each of them severally, all benefit and advantage of exception which can or may be had or taken to the many errors, uncertainties, and other imperfections of the plaintiff's bill of complaint, jointly and severally for answer thereunto, or to so much or to such parts thereof as these defendants, and each of them severally, are advised it is material or necessary to answer unto, answering say:

69 First. Said defendants, and each of them, except Moses Thatcher, severally deny that they ever were, and each and all of them severally deny that they are now assistant trustees of the said corporation of the Church of Jesus Christ of Latter-Day Saints, as set forth and averred in plaintiff's complaint. Said defendants and each of them severally aver that they never did, nor did any or either of them ever qualify or give bonds as assistant trustee for said defendant corporation, as provided and requi'ed by the ordinance and acts of incorporation, to qualify them to act as assistant trustees of said corporation. Said defendants, and each of them, admit that they, and each of them, did act as counsellors and advisers of the late trustee in trust of said defendant corporation, John Taylor, deceased, not as assistant trustees duly qualified in accordance with the acts of incorporation incorporating said defendant corporation, but simply and solely as members of said church, and counsellors and advisers of said trustee in trust when by him asked for counsel and advice regarding the religious and charitable works and affairs of said church.

And the said Moses Thatcher avers that on the eighth day of April, A. D. 1873, he was duly elected an assistant trustee for said corporation by said Church of Jesus Christ of Latter-Day Saints, at its general conference; that his term of office as such assistant trustee expired on the ninth day of October, A. D. 1875, and that he has never since been nor
70 acted as, nor performed any of the duties of an assistant trustee of said corporation.

Second. Said defendants, and each of them, jointly and severally aver that they never have, and do not now own, hold in trust or otherwise, or possess, any real or personal property of and belonging to the said defendant corporation. And said defendants, and each of them, jointly and severally specifically deny each and every of the averments and allegations of

the plaintiff's complaint, and they, and each and every of them, jointly and specifically disclaim and deny any ownership or possession as trustee, or otherwise, of any property, real or personal, of and belonging to the said defendant corporation.

Third. Said defendants, and each of them, jointly and severally aver that they have carefully read and thoroughly understand the answer of the defendant corporation, to which this answer of these defendants is attached, and said defendants, and each of them, jointly and severally here now adopt said answer of said defendant corporation and incorporate the same into this their answer as part thereof, with the same force and effect as if the same were here at large set forth. And said defendants, and each of them, severally aver that to the best of their knowledge, information, and belief, and to the best of the knowledge, information and belief of each and every of them severally, each and all of the averments and allegations of said answer of said defendant corporation are true in substance and in matter of fact, as they verily believe.

71 Wherefore, by reason of the facts herein set forth, said defendants pray the court that they may be dismissed hence with their proper costs and charges in this behalf laid out and expended.

JAMES O. BROADHEAD,
J. E. MCDONALD,
FRANKLIN S. RICHARDS,
LE GRAND YOUNG,
Solicitors for said Defendants.

(Endorsed:) Title, court, and cause. Answer of Woodruff, Snow, and others. Filed Nov. 9th, 1887. E. T. Sprague, clerk. Service of copy acknowledged. Geo. S. Peters, U. S. att'y.

72 In the supreme court of Utah Territory.

UNITED STATES OF AMERICA, PLANTIFF,
vs.
THE LATE CORPORATION OF THE CHURCH OF Jesus Christ of Latter-Day Saints *et al.*, defendants. } In equity.

Replication of the United States of America to the answer of the Late Corporation of the Church of Jesus Christ of Latter-Day Saints.

The plaintiff, the United States of America, by George S. Peters, United States attorney in and for the Territory aforesaid, who files this replication by direction of Augustus H. Garland, Attorney-General of the United States, says:

The said plaintiff, the United States of America, saving and reserving to itself all and all manner of advantage of exception, which may be had and taken to the manifold erro's, uncertainties, and insufficiencies of the answer of the said defendant, the Late Corporation of the Church of Jesus Christ of Latter-Day Saints, for replication thereunto says: That it does and will aver, maintain, and prove its said bill of complaint to be true, certain, and sufficient in the law to be answered unto by said defendants,

and that the answer of the said defendant is very uncertain, evasive, untrue, and insufficient in the law to be replied unto by the said
73 plaintiff; without that, that any other matter or thing in the said answer contained, material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed or avoided, traversed, or denied, is true; all which matters and things the said plaintiff is ready to aver, maintain, and prove as this honorable court shall direct, and humbly prays as in and by its said bill it has already prayed.

GEO. S. PETERS,
U. S. Attorney for Utah Territory.

(Endorsed:) Title, court, and cause. General replication to answer of late corporation of, &c., et al. Filed Nov. 26, 1887. E. T. Sprague, clerk. Service of copy acknowledged Nov. 26, 1887. Le Grand Young, of counsel for defendants.

74 In the supreme court of Utah Territory.

UNITED STATES OF AMERICA, PLAINTIFF, *vs.* THE LATE CORPORATION OF THE CHURCH OF Jesus Christ of Latter-Day Saints *et al.*, defendants.	In equity.

Replication of the United States of America, plaintiff, to the joint and several answer of Wilford Woodruff, Lorenzo Snow, Erastus Snow, Franklin D. Richards, Brigham Young, Moses Thatcher, Francis M. Lyman, John Henry Smith, George Teasdale, Heber J. Grant, and John W. Taylor.

The plaintiff, the United States of America, by George S. Peters, United States attorney in for the Territory aforesaid, who files this replication by direction of Augustus H. Garland, Attorney-General of the United States, says:

The plaintiff, the United States of America, saving and reserving to itself all and all manner of advantage of exception, which may be had and taken to the manifold erro's, uncertainties, and insufficiencies of the answer of the said defendant, for replication thereunto says: That it does and will aver, maintain, and prove its said bill of complaint to be true, certain, and sufficient in the law to be answered unto by said defendants, and that the answer of the said defendants is very uncertain, evasive, untrue and insufficient in the law to be replied unto, by the said
75 plaintiff; without that, that any other matter or thing in the said answer contained, material or effectual in the law to be re'lied unto, and not herein and hereby well and sufficiently replied unto, confessed or avoided, traversed, or denied, is true; all which matters and things the said plaintiff is ready to aver, maintain, and prove as this honorable court shall direct, and humbly prays as in and by its said bill it has already prayed.

GEO. S. PETERS,
U. S. Attorney for Utah Territory.

(Endorsed:) Title, court, and cause. General replication to the answer of Wilford Woodruff et al. Filed 26 Nov., 1887. E. T. Sprague, clerk. Service of copy acknowledged Nov. 26, 1887. Le Grand Young, of counsel for defendant.

76 In the supreme court of Utah Territory.

UNITED STATES OF AMERICA, PLAINTIFF,
vs.
THE LATE CORPORATION OF THE CHURCH of Jesus Christ of Latter-Day Saints *et al.*, defendants. } In equity.

Replication of the United States of America to the joint and several answer of William B. Preston, Robert T. Burton, and John R. Winder.

The plaintiff, the United States of America, by George S. Peters, United States attorney in and for the Territory aforesaid, who files this replication by direction of Augustus H. Garland, Attorney-General of the United States, says:

The plaintiff, the United States of America, saving and reserving to itself all and all manner of advantage of exception, which may be had and taken to the manifold erro's, uncertainties, and insufficiencies of the answer of the said defendant, for replication thereunto says: That it does and will aver, maintain, and prove its said bill of complaint to be true, certain, and sufficient in the law to be answered unto by said defendants, and that the answer of the said defendants is very uncertain, evasive, untrue, and insufficient in the law to be replied unto, by the said
77 plaintiff; without that, that any other matter or thing in the said answer contained, material or effectual in the law to be re'lied unto, and not herein and hereby well and sufficiently replied unto, confessed or avoided, traversed, or denied, is true; all which matters and things the said plaintiff is ready to aver, maintain, and prove as this honorable court shall direct, and humbly prays as in and by its said bill it has already prayed.

GEO. S. PETERS,
U. S. Attorney for Utah Territory.

(Endorsed:) Title, court, and cause. General replication to answer of Wm. B. Preston et al. Filed Nov. 26, 1887. E. T. Sprague, clerk. Service of copy acknowledged November 26, 1887. Le Grand Young, of counsel for defendant.

78 In the supreme court of Utah Territory.

UNITED STATES OF AMERICA
vs.
THE LATE CORPORATION OF THE CHURCH OF Jesus Christ of Latter-Day Saints *et al.*, defendants.

Angus M. Cannon, having been made by motion of said plaintiff a defendant in said entitled action, now and at all times hereafter saving and

reserving unto himself all benefits and advantages of any exception which can or may be had to the many errors, uncertainties and other imperfections of the plaintiff's bill of complaint, for answer thereto, or so much or such parts thereof as this defendant is advised is material or necessary to make answer unto, answering says:

That the said defendant, Angus M. Cannon, on the 18th day of September, 1874, became interested in the following-described land, which said defendant alleges on his information and belief to be coal lands, namely: The south half (½) of the southeast quarter (¼), the southeast quarter (¼) of the southwest quarter (¼), and lot four (4), section eighteen (18), and the north half (½) of the northeast quarter (¼), in section nineteen (19), in township three (3), north of range six (6), east of lands subject to sale at Salt Lake City, Utah Territory. Said defendant, Angus M.
79 Cannon, further shows that he, with other claimants of said land, among whom was one Daniel H. Wells, filed upon said lands pursuant to that certain act of Congress of the United States approved March 3rd, 1873, entitled "An act to provide for the sale of lands of the United States containing coal."

That said claimants' right to obtaining title to said land was contested, but the claim of said defendant, Angus M. Cannon, and the said Daniel H. Wells, and others, as aforesaid, was sustained by the Land Department of the United States of America, but that by some error or mistake, or otherwise, a patent to said lands before the final adjudication of the right of said Angus M. Cannon, Daniel H. Wells, and others to the same had been executed and delivered to some other party or claimant thereto. Said defendant, Angus M. Cannon, further states that on his information and belief that he and his co-claimants are entitled to have and will yet obtain a title in fee to said premises.

That said defendant, Angus M. Cannon, further alleges that on or about the year of 1879 the said Daniel H. Wells, being the owner of an undivided half of said land, then and there for a valuable consideration deeded and conveyed the same to the said defendant; that the consideration for said undivided one-half of said land was paid by the trustee in trust of the Church of Jesus Christ of Latter-Day Saints, and that said defendant at all times since said date of said deed has held and now holds the undivided one-half interest in said mine for the use and benefit of said church.
80 Defendant further alleges that he holds or has no other real or personal property of or belonging to said church in his name or otherwise.

ANGUS M. CANNON.

LE GRAND YOUNG,
F. S. RICHARDS, and
SHEEKS & RAWLINS,
Attorneys for defendant, Angus M. Cannon.

(Endorsed:) Title, court, and cause. Answer of Angus M. Cannon. Filed July 9, 1888. E. T. Sprague, clerk.

81 In the supreme court of the Territory of Utah.

THE UNITED STATES OF AMERICA, PLAINTIFF,
vs.
THE LATE CORPORATION OF THE CHURCH OF Jesus Christ of the Latter-Day Saints, and John Taylor, late trustee in trust, and Wilford Woodruff, Lorenzo Snow, Erastus Snow, Franklin D. Richards, Brigham Young, Moses Thatcher, Francis M. Lyman, John Henry Smith, George Teasdale, Heber J. Grant, and John W. Taylor, late assistant trustees in trust of said corporation; William B. Preston, Robert T. Burton, John R. Winder, Francis Armstrong, Jesse W. Fox, jr., and Theodore McKean, defendants. } Answer.

Now come the defendants, Francis Armstrong, Jesse W. Fox, jr., and Theodore McLain, and allege:

That said Francis Armstrong is, and since long prior to the 3rd day of March, 1887, has been *siezed* in fee, but in trust, nevertheless, to and for the use and benefit of the Church of Jesus Christ of Latter-Day Saints, of the following-described property, to wit: All that portion of lots 10, 11, 12, 13, and 14, block 38, Big Field Ten Acre Plot Territorial survey, containing $16\frac{72}{100}$ acres, which is included within the limits of the NE. $\frac{1}{4}$ of section 24; also the E. $\frac{1}{2}$ of the NE. $\frac{1}{4}$; also parts of lots 1 and 5, commencing at a point south 14 rods from the NE. corner of lot 1,
82 section 23; thence west $48\frac{4}{10}$ rods; thence south 96 rods; thence S. 19° E. 11 and $\frac{2}{10}$ rods to the west bank of water ditch; thence along the west bank of said water ditch south 25° west 44 rods, more or less, to the south line of the NE. $\frac{1}{4}$ of section 32; thence east 47 rods, more or less, to the SE. corner of lot 5; thence N. 146 rods to the place of beginning, containing $73\frac{35}{100}$ acres, more or less.

Also $\frac{1}{2}$ of the street on the N. side of all the above-described land containing one $1\frac{62}{100}\frac{1}{2}$, acres more or less. Also part of the SW. $\frac{1}{4}$ of section 24, commencing at a point 28 rods west from the SE. corner of said $\frac{1}{4}$ section; thence running north 30°, E. 56 rods to the east line of said $\frac{1}{4}$ section; thence N. $111\frac{1}{2}$ rods to the center of said section; thence W. 160 rods; thence south one hundred and sixty rods; thence east 132 rods to the place of beginning, containing $156\frac{38}{100}$ acres, more or less. Also lots 6 and 9 in section 23, and lots 1 and 4 in section 26, containing 127 acres, more or less; also part of the SE. $\frac{1}{4}$ of section 23, commencing at the NE. corner of said quarter section; thence running south 160 rods; thence west 160 rods; thence N. 104 rods, more or less, to the River Jordan; thence down said river 9 rods, more or less; thence east 2 rods; thence along the east bank of water ditch north 25° degrees, east $56\frac{2}{10}$ rods; thence east 127 rods to the place of beginning, containing $154\frac{22}{100}$ acres, more or less; also part of the southeast $\frac{1}{4}$ of section 26, containing 127 acres, more or less; also part of the NW. $\frac{1}{4}$ of section 24, commencing 14 rods S. from the NE. corner of said $\frac{1}{4}$ section; thence running west 160 rods; thence south 146

rods; thence east 160 rods; thence N. 146 rods to the place of be-
83 ginning, containing 146 acres, more or less; also $\frac{1}{2}$ of the street on the N. side of said quarter section, containing two acres; also part of the NW. $\frac{1}{4}$ of section 25, commencing at the SW. corner of said quarter section; thence running N. 160 rods; thence E. 132 rods; thence south 30° degrees, west 92 rods; thence S. $69\frac{6}{10}$ rods; thence west 50 rods; thence south $12\frac{3}{10}$ rods; thence west 36 rods to the place of beginning, containing $93\frac{38}{100}$ acres, more or less; also the NE. $\frac{1}{4}$ of section 26, containing 160 acres. All of the above-described lands are situated in township one (1) south of range one (1) west, United States survey of Utah, excepting, however, therefrom the following described tract of land conveyed to the Denver, Rio Grande and Western Railway Company by deed dated February 7th, 1882: Beginning in the center of the D. and R. G. W. R. R. track 12 rods south and 30 rods east from NW. corner of NW. $\frac{1}{4}$ of section 24, township one (1), south of range one (1), West Salt Lake meridian; thence east 50 feet; thence south parallel with and 50 feet distant from the center of said R. R. track $4,381\frac{6}{10}$ feet to a 2-degree curve; thence southerly on the east side along 2-degree curve and fifty feet from center of said R. R. track 731 feet; thence S. $14\frac{3}{4}$ degrees, E. $2,535\frac{1}{2}$ feet; thence west 100 feet; thence north $14\frac{3}{4}$ degrees, W. $2,535\frac{1}{2}$ feet; thence northerly along said 2°-curve on west side thereof and 50 feet distant from the center of said R. R. track 731 feet; thence north $4,381\frac{6}{10}$ feet; thence east 50 feet to place of beginning, containing $17\frac{56}{100}$ acres of land, lying within the limits of the W. $\frac{1}{2}$ of section 24 and west $\frac{1}{2}$ of NW. $\frac{1}{4}$ of section 25, township and range aforesaid, said deed being recorded February 7th, 1882, in Book "S" of Deeds and Transfers, pages 451 and 452, records of Salt Lake County, U. T.; and also
84 excepting that portion of the same bounded and described as follows, to wit: Part of section twenty-six (26) in township one (1), south of range one (1), West Salt Lake meridian, beginning at the intersection of the west side of a four-rod street, running north and south, and the center of Mill Creek fifteen and five-tenths ($15\frac{5}{10}$) rods west and eighty-one and five-tenths ($81\frac{5}{10}$) rods north from the southeast corner of the northeast quarter ($\frac{1}{4}$) of said section twenty-six (26); thence north 84° 30′ west, along the center of said creek one hundred and seventy-six (176) rods, more or less, to the east bank of the River Jordan; thence southerly along the east bank of the said river eighty-six (86) rods to the northeast corner of Benjamin Harmon's land; thence south 2° 15′ east along the east line of said Harmon's land one hundred and thirty-one and six-tenths $131\frac{6}{0}$ rods to the north side of a county road; thence north 89° 15′ east along the north side of said county road one hundred and fifty-four and eight-tenths ($154\frac{8}{10}$) rods; thence north 81° east thirty-six and two-tenths ($36\frac{2}{10}$) rods to a point due south from the place of beginning; thence north one hundred and seventy-nine (179) rods to the place of beginning, containing two hundred and twenty-three and seventy, one-hundredths ($223\frac{70}{100}$) acres, be the same more or less.

That the said Jesse W. Fox, jr., is and since the twenty-third day of October, 1887, has been *siezed* in fee of the real estate last above described, but in trust nevertheless to and for the use and benefit of the Church of Jesus Chri*ch* of Latter-Day Saints.

That the said Theodore McKean is and since long prior to the 3rd
85 day of March, 1887, has been *siezed* in fee, but in trust nevertheless to and for the use and benefit of the president of the Church of Jesus Christ of Latter-Day Saints, of the following-described real estate, to wit: Commencing at a point ten (10) rods west of the northeast corner of lot six (6) in block seventy-five (75), Plat "A," Salt Lake City survey, and running thence south ten (10) rods; thence west seven (7) rods; thence north ten (10) rods; thence east seven (7) rods to the place of beginning.

That neither of said defendants own, hold, or possess any other property, real or personal, in trust for said church.

J. O. BROADHEAD,
F. S. RICHARDS,
Solicitors for said Defendants.

(Endorsed:) Title, court, and cause. Answer of Armstrong, Forx & McKean. Service of copy acknowledged Oct. 6th, 1888. Geo. S. Peters, U. S. att'y. Filed Oct. 6th, 1888. E. T. Sprague, clerk.

86 In the supreme court of Utah Territory.

THE UNITED STATES OF AMERICA, PLAINTIFF,
vs.
THE LATE CORPORATION OF THE CHURCH OF Jesus Christ of Latter-Day Saints and John Taylor, late trustee in trust, and Wilford Woodruff, Lorenzo Snow, Erastus Snow, Franklin D. Richards, Brigham Young, Moses Thatcher, Francis M. Lyman, John Henry Smith, George Teasdale, Heber J. Grant, and John W. Taylor, late assistant trustees in trust of said corporation, William B. Preston, Robert T. Burton, John R. Winder, Francis Armstrong, Jesse W. Fox, jr., and Theodore McKean, defendants.

Now come William B. Preston, Robert T. Burton, and John R. Winder, defendants herein, and respectfully represent to the court and allege:

That on the nineteenth day of May, A. D. 1887, they were duly appointed by the probate court of Salt Lake County, Territory of Utah, trustees to hold title to real estate belonging to the Church of Jesus Christ of Latter-Day Saints, having been previously nominated thereto by the authorities of said church; that as trustees they now hold the legal title to block eighty-seven (87), Plat "A," Salt Lake City survey, situated in the city and county of Salt Lake and Territory of Utah, known as the
87 Temple block; that there are on said block three large buildings, two completed and the third in course of construction, but nearing completion; that said buildings have been and are being constructed by said Church of Jesus Christ of Latter-Day Saints, exclusively for religious purposes, and that the same have been and are used exclusively for the worship of God; that the whole of said block is ground appurtenant

to said buildings, and that the same has been in the possession of said church and used by it ever since the year 1848, exclusively fo' religious purposes and for the worship of God.

Wherefore your petitioners pray that the premises above described, with the buildings thereon and the appurtenances thereto, be, by order and decree, set apart to said church, and the title thereto and possession thereof confirmed in your petitioners as trustees aforesaid, and for such other and further relief as may seem to the court meet and proper.

JAS. O. BROADHEAD,
F. S. RICHARDS,
SHEEKS & RAWLINS,
Solicitors for said petitioners.

(Endorsed:) Title, court, and cause. Petition of Preston, Bu'ton, and Winder. Copy received this 6th day of October, 1888. Geo. S. Peters, U. S. att'y. Filed Oct. 6, 1888. E. T. Sprague, clerk.

88 In the supreme court of Utah Territory.

THE UNITED STATES OF AMERICA, PLAINTIFF,
vs.
THE LATE CORPORATION OF THE CHURCH OF Jesus Christ of Latter-Day Saints, and John Taylor, late trustee in trust, and Wilford Woodruff, Lorenzo Snow, Erastus Snow, Franklin D. Richards, Brigham Young, Moses Thatcher, Francis M. Lyman, John Henry Smith, George Teasdale, Heber J. Grant, and John W. Taylor, late assistant trustees in trust of said corporation, William B. Preston, Robert T. Burton, John R. Winder, Francis Armstrong, Jesse W. Fox, jr., and Theodore McKean, defendants.

Now come William B. Preston, Robert T. Burton, and John R. Winder, defendants herein, and respectfully represent to the court and allege:

That on the nineteenth day of May, A. D. 1887, they were duly appointed by the probate court of Salt Lake County, Territory of Utah, trustees to hold title to real estate belonging to the Church of Jesus Christ of Latter-Day Saints, having been previously nominated thereto by the authorities of said church; that as trustees they now hold the legal title to the following described land and premises, situated in the city and county of Salt Lake, Territory of Utah, to wit: A portion of block eighty-eight
89 (88), Plat A, Salt Lake City survey, bounded and described as follows, to wit: Commencing at a point four (4) rods north of the southwest corner of lot four (4), in block eighty-eight (88), Plat A, Salt Lake City survey, and running thence north twenty-six (26) rods, thence east twenty (20) rods, thence south twenty-two and one-half (22½) rods, thence west fourteen (14) rods, thence south three and one-half (3½) rods, thence west six (6) rods to the place of beginning, known as the "Tithing Office" property; that said premises are held in trust by said trustees for

the use and benefit of the Church of Jesus Christ of Latter-Da' Saints; that they were taken possession of by the agents of said Church of Latter-Day Saints when Salt Lake City was first laid out and surveyed, in 1848, and ever since that time have been and now are used and occupied by said church; that prior to July 1st, 1862, buildings and other improvements of the value of several thousand dollars had been built thereon, by said church, and that it had acquired a vested right to, and interest in said property before July 1st, 1862, and was and is entitled to own and possess the same.

Wherefore your petitioners pray that the premises above described, with the buildings thereon and the appurtenances thereto, by proper order and decree, be set apart to said church and the title thereto and possession thereof confirmed in your petittoners as trustees as aforesaid; and fo' such other and further relief as may seem to the court meet and p'oper.

JAMES O. BROADHEAD,
F. S. RICHARDS,
SHEEKS & RAWLINS,
Solicitors for said petitioners.

(Endorsed:) Title, court, & cause. Petition of Preston, Burton, and Winder. Received copy this 6th day of Oct., 1888. Filed Oct. 6, 1888. E. T. Sprague, clerk.

90 In the supreme court of Utah Territory.

THE UNITED STATES OF AMERICA, PLAINTIFF,
vs.
THE LATE CORPORATION OF THE CHURCH OF Jesus Christ of Latter-Day Saints, and John Taylor, late trustee in trust, and Wilford Woodruff, Lorenzo Snow, Erastus Snow, Franklin D. Richards, Brigham Young, Moses Thatcher, Francis M. Lyman, John Henry Smith, George Teasdale, Heber J. Grant, and John W. Taylor, late assistant trustee in trust of said corporation, William B. Preston, Robert T. Burton, John R. Winder, Francis Armstrong, Jesse W. Fox, jr., and Theodore McKean, defendants.

Now come William B. Preston, Robert T. Burton, and John R. Winder, defendants herein, and respectfully represent to the court and allege:

That on the nineteenth day of May, A. D. 1887, they were duly appointed by the probate court of Salt Lake County, Territory of Utah, trustees to hold title to real estate belonging to the Church of Jesus Christ of Latter-Day Saints, having been previously nominated thereto by the authorities of said church; that as trustees they now hold the legal title to the following described land and premises, situated in the city and county of Salt Lake, Territory of Utah, to wit: The east half (½) of lot six (6), in block seventy-five (75), Plat A, Salt Lake City
91 survey, described as follows: Commencing at the northeast corner of lot six (6), in block seventy-five (75), Plat A, Salt Lake City

survey, and running thence south ten (10) rods, thence west ten (10) rods, thence north ten (10) rods, thence east ten (10) rods to the place of beginning known as the Gardo House and lot; that said premises are held in trust by said trustees for the use and benefit of the president of that body of religious worshippers known and called the Church of Jesus Christ of Latter-Day Saints, as a parsonage, and the president of said church has made his home and residence thereon ever since the year 1878.

That the following-described premises lying immediately west of and adjoining the premises above described, viz: A part of lot six (6), in block seventy-five (75), Plat A, Salt Lake City survey, described as follows: Commencing at a point ten (10) rods west of the northeast corner of said lot, and running thence south ten (10) rods, thence west seven (7) rods, thence north ten (10) rods, thence east seven (7) rods to the place of beginning, known as the Historian Office and grounds, are, and have been ever since the year 1878, a part of said parsonage and the building situated thereon contains the church library and records; that the legal title to said last above-described premises is vested in one Theodore McKean, who holds it on the same trusts and for the same purposes as those hereinbefore set out, to wit, as a part of the parsonage or residence of the president of said Church of Jesus Christ of Latter-Day Saints.

92 Wherefore your petitioners pray that all the premises above described, with the buildings thereon and the appurtenances thereto by proper order and decree, be set apart to said church as a parsonage, and the title thereto confirmed in the respective trustees who now hold the legal title to the same, and for such other and further relief as may seem to the court meet and proper.

JAS. O. BROADHEAD,
F. S. RICHARDS,
SHEE'S & RAWLINS,
Solicito's for said petitioners.

(Endorsed:) Title, court, and cause. Petition of Preston, Burton, and Winder. Copy served this 6th day of October, 1888. Geo. S. Peters, U. S. atty. Filed Oct. 6, 1888. E. T. Sprague, clerk.

93 In the supreme court of Utah Territory.

UNITED STATES OF AMERICA, PLAINTIFF,
vs.
THE LATE CORPORATION OF THE CHURCH OF Jesus Christ of Lattet-Day Saints, and John Taylor, late trustee in trust, and Wilford Woodruff, Lorenzo Snow, Erastus Snow, Franklin D. Richards, Brigham Young, Moses Thatcher, Francis M. Lyman, John Henry Smith, George Teasdale, Heber J. Grant, and John W. Taylor, late assistant trustee in trust of said corporation, defendants. } Answer.

Now comes the said United States of America, by George S. Peters, its attorney for said Territory of Utah, and for answer to the petition this day

filed herein by the defendants, William B. Preston, Robert T. Burton, and John R. Winder, says:

That it is not true that the said William B. Preston, Robert T. Burton, and John R. Winder, as trustees, or otherwise, hold the legal title to the real estate described in said petition and designated therein as the tithing-office property, or any part thereof.

That it is not true that they held the same for the use and benefit of the Church of Jesus Christ of Latter-Day Saints, or otherwise; that it is not true that prior to July 1st, 1862, the said church had a vested right to, or interest in said property, or any part thereof, and the said church is not
94 now entitled to own or possess the same or any part thereof.

The plaintiff further answering said petition says that the so-called conveyance under which the said William B. Preston, Robert T. Burton, and John R. Winder claim to hold the legal title to said property was and is wholly void and of no effect for want of power in the persons named therein as grantors to make the same.

Wherefore the plaintiff asks that said petition be denied.

GEO. S. PETERS,
U. S. Atty.

(Endors'd:) Answer to petition. Filed Oct. 6, 1888. E. T. Sprague, clerk.

95 In the supreme court of Utah Territory.

UNITED STATES OF AMERICA, PLAINTIFF, *vs.* THE LATE CORPORATION OF THE CHURCH OF Jesus Christ of Latter-Day Saints, and John Taylor, late trustee in trust, and Wilford Woodruff, Lorenzo Snow, Erastus Snow, Franklin D. Richards, Brigham Young, Moses Thatcher, Francis M. Lyman, John Henry Smith, George Teasdale, Heber J. Grant, and John W. Taylor, late assistant trustee in trust of said corporation, defendants.	Answer.

Now comes the said United States of America, by George S. Peters, its attorney for said Territory of Utah, and for answer to the petition this day filed herein by the defendants, William B. Preston, Robert T. Burton, and John R. Winder, says:

That it is not true that the said William B. Preston, Robert T. Burton, and John R. Winder, as trustees, or otherwise, hold the legal title to the real estate described in said petition and designated therein as the Temple block, or any part thereof.

The plaintiff further answering said petition says that the pretended conveyance under which the said William B. Preston, Robert T. Burton, and John R. Winder claim to hold the legal title to said property was, and is, wholly void and of no effect for want of power in the persons named therein as grantors to make the same.

GEO. S. PETERS,
U. S. Atty.

(Endorsed:) Answer to petition. Filed Oct. 6th, 1888. E. T. Sprague, clerk.

96 In the supreme court of Utah Territory.

UNITED STATES OF AMERICA, PLAINTIFF, *vs.* THE LATE CORPORATION OF THE CHURCH OF Jesus Christ of Latter-Day Saints, and John Taylor, late trustee in trust, and Wilford Woodruff, Lorenzo Snow, Erastus Snow, Franklin D. Richards, Brigham Young, Moses Thatcher, Francis M. Lyman, John Henry Smith, George Teasdale, Heber J. Grant, and John W. Taylor, late assistant trustee in trust of said corporation, defendants.	Answer.

Now comes the said United States of America, by George S. Peters, its attorney for said Territory of Utah, and for answer to the petition this day filed herein by the defendants, William B. Preston, Robert T. Burton, and John R. Winder, says:

That it is not true that the said William B. Preston, Robert T. Burton, and John R. Winder as trustees, or otherwise, hold the legal title to the real estate in said petition first described and designated therein as the Gardo house and lot, or any part thereof; that it is not true that they hold the same or any part thereof in trust for the use and benefit of the president of that body of religious worshippers known and called the Church of Jesus Christ of Latter-Day Saints, as a parsonage, or otherwise.

The plaintiff further answering said petition says that the pretended conveyance under which the said William B. Preston,
97 Robert T. Burton, and John R. Winder claim to hold the legal title to said property, was, and is wholly void and of no effect for want of power in the persons named therein as grantors to make the same.

The plaintiff further avers that said property known as the Gardo house and lot is not now and never has been a parsonage.

The plaintiff denies that the real estate in said petition secondly described, and designated therein as the historian's office and grounds, are and ever since the year 1878 have been a part of any parsonage or of the property in said petition first described.

The plaintiff also denies that the said Theodore McKean holds the legal title of said property as a part of the parsonage or residence of the president of the Church of Jesus Christ of Latter-Day Saints, but on the contrary, the plaintiff avers, that said Theodore McKean holds the legal title to said property in trust for the late corporation of the Church of Jesus Christ of Latter-Day Saints as a part of its general property, and not otherwise; that said historian's office and grounds, are entirely separate and apart from said Gardo house and lot, and are in no manner connected therewith, nor are they used in connection with the same.

Plaintiff therefore asks that said petition be denied.

GEO. S. PETERS,
U. S. Atty.

(Endorsed:) Answer to petition. Filed Oct. 6, 1888. E. T. Sprague, clerk.

98 In the supreme court of Utah Territory.

UNITED STATES OF AMERICA, PLAINTIFF,
vs.
THE LATE CORPORATION OF THE CHURCH OF Jesus Christ of Latter-Day Saints, and Wilford Woodruff, Lorenzo Snow, Erastus Snow, Franklin D. Richards, Brigham Young, Moses Thatcher, Francis M. Lyman, John Henry Smith, George Teasdale, Heber J. Grant, and John W. Taylor, late assistant trustees in trust of said corporation, defendants.

In the matter of the petition of William B. Preston, Robert T. Burton and John R. Winder to have the "Gardo house" and lot and the "historian office" and grounds set apart to them as trustees.

Replication of petitioners.

Now come the said petitioners and for replication to the answer of the United States of America to the matters and things set forth in their petition to have the "Gardo house" and lot and the "historian office" and grounds set apart to them as trustees for the Church of Jesus Christ of Latter-Day Saints, say that they will aver and prove the said petition to be true, and that the answer of the United States of America is untrue, uncertain, and insufficient, all of which matters and things these repliants are ready to aver and prove as the court shall direct and they pray as in their said petition they have already prayed.

JAS. O. BROADHEAD,
Solicitors for said Petitioners.

(Endorsed:) Replicaton. Copy served Oct. 8, 1888. Geo. S. Peters, U. S. atty. Filed Oct. 8, 1888. E. T. Sprague, clerk.

99 In the supreme court of Utah Territory.

UNITED STATES OF AMERICA, PLAINTIFF,
vs.
THE LATE CORPORATION OF THE CHURCH OF Jesus Christ of Latter-Day Saints, and Wilford Woodruff, Lorenzo Snow, Erastus Snow, Franklin D. Richards, Brigham Young, Moses Thatcher, Francis M. Lyman, John Henry Smith, George Teasdale, Heber J. Grant, and John W. Taylor, late assistant trustees in trust of said corporation, defendants.

In the matter of the petition of William B. Preston, Robert T. Burton, and John R. Winder, to have the "tithing office" property set apart to them as trustees.

Replication of petitioners.

Now come the said petitioners and for replication to the answer of the United States of America to the matters and things set forth in their petition to have the "tithing office" property set apart to them as trustees for

the Church of Jesus Christ of Latter-Day Saints, say that they will aver and prove the said petition to be true, and that the answer of the United States of America is untrue, uncertain, and insufficient, all of which matters and things these repliants are ready to aver and prove as the court shall direct, and they pray as in their said petition they have already prayed.

JAS. O. BROADHEAD,
Solicitors for said Petitioners.

(Endorsed:) Replication. Copy served Oct. 8, 1888. Geo. S. Peters, U. S. atty. Filed Oct. 8, 1888. E. T. Sprague, clerk.

100 In the supreme court of Utah Territory.

UNITED STATES OF AMERICA, PLAINTIFF,
vs.
THE LATE CORPORATION OF THE CHURCH OF Jesus Christ of Latter-Day Saints and Wilford Woodruff, Lorenzo Snow, Erastus Snow, Franklin D. Richards, Brigham Young, Moses Thatcher, Francis M. Lyman, John Henry Smith, George Teasdale, Heber J. Grant, and John W. Taylor, late assistant trustees in trust of said corporation, defendants.

In the matter of the petition of William B. Preston, Robert T. Burton, and John R. Winder, to have the "Temple block" set apart to them as trustees.

Replication of petitioners.

Now come the said petitioners and for replication to the answer of the United States of America to the matters and things set forth in their petition to have the "Temple block" set apart to them as trustees for the Church of Jesus Christ of Latter-Day Saints, say that they will aver and prove the said petition to be true, and that the answer of the United States of America is untrue, uncertain, and insufficient, all of which matters and things these repliants are ready to aver and prove as the court shall direct and they pray as in their said petition they have already prayed.

JAS. O. BROADHEAD,
Solicitors for said Petitioners.

(Endorsed:) Replication. Copy served Oct. 8, 1888. Geo. S. Peters, U. S. atty. Filed Oct. 8, 1888. E. T. Sprague, clerk.

101 In the supreme court of Utah Territory.

UNITED STATES OF AMERICA, PLAINTIFF,
vs.
THE LATE CORPORATION OF THE CHURCH OF Jesus Christ of Latter-Day Saints et al., defendants. } Replication.

The replication of the United States of America to the joint answer of Francis Armstrong, Jesse W. Fox and Theodore McKean.

The plaintiff the United States of America, by George S. Peters, United States Attorney in and for the Territory aforesaid, who files this replica-

tion by direction of Augustus H. Garland, Attorney-General of the United States, says: The plaintiff, the United States of America, saving and reserving to itself all manner of advantage of exception which may be had and taken to the manifold errors, uncertainties and insufficiencies of the answer of the said defendants, Francis Armstrong, Jesse W. Fox and Theodore McKean, for replication thereunto says, that it does and will aver, maintain and prove its said bill of complaint to be true, certain and sufficient in the law to be answered unto by the said defendants, and that the answer of the said defendants is very uncertain, evasive, untrue, and insufficient in the
102 law to be replied unto by the said plaintiff; without that, that any other matter or thing in the said answer contained, material or effectual in the law to be replied unto, and not herein and hereby well and sufficiently replied unto, confessed or avoided, traversed or denied, is true.

All which matters and things the said plaintiff is ready to aver, maintain and prove as this honorable court shall direct, and humbly prays as in and by its said bill it has already prayed.

By GEO. S. PETERS, *U. S. Att'y.*

(Endorsed:) Title, court, and cause. Replication. Filed Oct. 8, 1888. E. T. Sprague, clerk.

103 In the supreme court of the Territory of Utah.

THE UNITED STATES OF AMERICA, PLAINTIFF,
vs.
THE LATE CORPORATION OF THE CHURCH OF Jesus Christ of Latter-Day Saints, and John Taylor, late trustee in trust, and Wilford Woodruff, Lorenzo Snow, Erastus Snow, Franklin D. Richards, Brigham Young, Moses Thatcher, Francis M. Lyman, John Henry Smith, George Teasdale, Heber J. Grant, and John W. Taylor, late assistant trustee in trust of said corporation, William B. Preston, Robert T. Burton, John R. Winder, Francis Armstrong, Jesse W Fox, jr., and Theodore McKean, defendants. } Petition.

Now, come George Romney, Henry Dinwoodey, James Watson and John Clark, and, by leave of court first had and obtained, file this petition in intervention in the above-entitled cause on behalf of themselves and all others who are members of the church hereinafter mentioned, and for their grounds of intervention allege:

That the said members are more than one hundred thousand
104 in number, and so numerous that they cannot without manifest inconvenience and oppressive delays in the said suit be brought before the court; that all said members have an interest in common with said petitioners in the subject of this petition, and the questions involved in this suit. Wherefore, said petitioners file this petition for the benefit of all said members.

That heretofore, on the 7th day of November, 1887, this court made an order in the above-entitled action appointing Frank H. Dyer receiver of the Church of Jesus Christ of Latter-Day Saints, who thereupon duly qualified, and ever since has been, and still is, acting as such receiver.

That since his said appointment said receiver has seized, taken possession of, and now holds, subject to the order of this court, the following described real and personal property, to wit:

1. All of block eighty-seven (87) plat "A," Salt Lake City survey, situated in the city and county of Salt Lake and Territory of Utah, known as the "Temple Block."

2. The east half ($\frac{1}{2}$) of lot six (6) in block seventy-five (75) plat "A," Salt Lake City survey described as follows: Commencing at the northeast corner of said lot, and running thence south ten (10) rods; thence west ten (10) rods; thence north ten (10) rods, thence east (10) rods to the place of beginning, known as the "Gardo House," and lot.

3. A part of lot six (6) in block seventy-five (75) plat "A," Salt Lake City survey, described as follows: Commencing at a point ten (10) rods west of the northeast corner of said lot, and running thence south ten (10) rods, thence west seven (7) rods thence north ten (10) rods, thence east seven (7) rods to the place of beginning, known as the "Historian Office" and grounds.

4. A portion of block eighty-eight (88) plat "A," Salt Lake City survey, bounded and described as follows, to wit: Commencing at a point four (4) rods north of the southwest corner of said lot four (4), running thence north sixteen (16) rods; thence east twenty (20) rods; thence south twelve and one-half ($12\frac{1}{2}$) rods; thence west fourteen (14) rods; thence south three and one-half ($3\frac{1}{2}$) rods; thence west six (6) rods to the place of beginning, known as part of the "Tithing Office" property.

5. The south half of lots six (6) and seven (7) in block eighty-eight (88), plat "A," Salt Lake City survey, also known as a part of the "Tithing Office" property.

6. All that portion of lots 10, 11, 12, 13, and 14, in block 38, Big Field Ten-Acre Plot Territorial survey, containing $16\frac{72}{100}$ acres, which is included within the limits of the NE. $\frac{1}{4}$ of section 24. Also the E. $\frac{1}{2}$ of the NE. $\frac{1}{4}$; also parts of lots 1 and 5, commencing at a point south 14 rods from the NE. corner of lot 1, section 23; thence west $48\frac{4}{10}$ rods; thence south 96 rods; thence S. 19 degrees, E. $11\frac{2}{10}$ rods to the west bank of water ditch; thence along the west bank of said water ditch, south 25 degrees west, 44 rods more or less to the south line of the NE. $\frac{1}{4}$ of section 23; thence east 47 rods more or less to the SE. corner of lot 5; thence north 146 rods to the place of beginning, containing $73\frac{35}{100}$ acres more or less; also $\frac{1}{2}$ of the street on the N. side of all the above described land, containing $1\frac{62}{100}\frac{1}{2}$ acres more or less; also part of the SW. $\frac{1}{4}$ of section 24, commencing at a point 28 rods west from the SE. corner of said $\frac{1}{4}$ section; thence running north 30 degrees E. 56 rods to the east line of said $\frac{1}{4}$ section; thence north $111\frac{1}{2}$ rods to the center of said section; thence W. 160 rods, thence south one hundred and sixty rods; thence east 132 rods to the place of beginning, containing $156\frac{38}{100}$ acres more or less. Also lots 6 and 9 in section 23, and lots 1 and 4 in section 26, containing 127 acres more or less; also part of the SE. $\frac{1}{4}$ section 23, commencing at the NE. corner of said quarter section; thence running south 160 rods; thence west 160 rods; thence north 104 rods, more or less to the River Jordan; thence down said river 9 rods, more or less; thence east 2 rods; thence along the east bank of water ditch, north 25 degrees east, $56\frac{2}{10}$ rods; thence east 127 rods to the place of beginning, con-

taining 154 22/100 acres more or less; also part of the southeast ¼ of section 26, containing 127 acres more or less; also part of the NW. ¼ of section 24, commencing 14 rods S. from the NE. corner of said ¼ section; thence running west 160 rods; thence south 146 rods; thence east 160 rods; thence north 146 rods, to the place of beginning, containing 146 acres more or less; also one-half (½) of the street on the N. side of said quarter section, containing
107 two acres; also part of the NW. ¼ of section 25, commencing at the southwest corner of said quarter section; thence running N. 160 rods, thence E. 132 rods; thence south 30 degrees west; 92 rods, thence S. 69 6/100 rods; thence west 50 rods; thence south 12 3/100 rods; thence west 36 rods to the place of beginning, containing 93 38/100 acres, more or less. Also the NE. ¼ of section 26, containing 160 acres; all of the above-described lands are situated in township one (1) south of range one (1) west, United States survey of Utah, and are known as the Church Farm. Excepting, however, therefrom, the following described tract of land conveyed to the Denver & Rio Grande Western Railway Company by deed dated February 7th, 1882: Beginning in the center of the D. and R. G. W. R. R. track 12 rods south 30 rods east from NW. corner of NW. ¼ of section 24, township one (1) south of range one (1) west, Salt Lake meridian; thence east 50 feet; thence south, parallel with and 50 feet distant from the center of said R. R. track 4,381 6/100 feet to a 2 degree curve; thence southerly on the east side along 2 degree curve, and fifty feet from center of said R. R. track 731 feet; thence south 14¾ degrees E. 2,535½ feet; thence west 100 feet; thence north 14¾ degrees W. 2,535½ feet; thence northerly along said 2 degree curve on west side thereof and fifty feet distant from the center of said R. R. track 731 feet; thence north
108 4,381 6/100 feet; thence east 50 feet to place of beginning, containing 17 66/100 acres of land, lying within the limits of the W. ½ of section 24, and west ½ of NW. ¼ of section 25, township and range aforesaid; said deed being recorded February 7th, 1882, in Book S of Deeds and Transfers, pages 451 and 452, Records of Salt Lake County, U. T.

7. An undivided one-half of the south half of the southeast quarter; the southeast quarter of the southwest quarter; and lot 4, section 18, and the north half of the northeast quarter of section 19, township 3 north, range 6 east, in Summit County, Utah Territory, known as coal lands.

Personal property.

One large safe.
One medium-sized iron safe.
25 arm chairs.
11 rotary chairs.
10 upholstered chairs.
Two desks.
One letter press.
800 shares of $100 each of the capital stock of the Salt Lake Gas Company.
4,732 shares of $100 each of the capital stock of the Deseret Telegraph Company.

One promissory note, dated March 2nd, 1887, due and payable
109 to John Taylor, trustee in trust, or order two years after date, calling for the sum of $13,333.32, bearing 6 per cent interest from date, signed by Sharp and Little.

One promissory note dated March 2nd, 1887, due and payable to John Taylor, trustee in trust, or order, two years after date, and calling for $1,666.66, with 6 per cent interest from date, signed Le Grand Young.

One promissory note, dated March 2nd, 1887, payable to the order of John Taylor, trustee in trust, in two years from date, calling for $4,833.33, with 6 per cent interest from date, signed James Jack.

One promissory note, dated March 2nd, 1887, payable to John Taylor, trustee in trust, or order, in two years from date, calling for $5,000 with six per cent interest from date, and signed by H. B. Clawson.

Thirty thousand one hundred and fifty-eight (30,158) sheep, $237,-666.15 money.

That since said personal property came into the possession of the receiver heretofore appointed in this cause, he has collected as rent from the said real estate $2,850; as dividends on said gas stock, $4,900; as interest on said money, $2,233.60. Said property being of the aggregate value of about seven hundred and fifty thousand dollars, exclusive of the Temple Block.

That all the said described property is, and at the time it was so taken by said receiver was, and long prior thereto had been,
110 the property of the Church of Jesus Christ of Latter-Day Saints, and the possession thereof by said receiver is wrongful and without authority or right.

That the said Church of Jesus Christ of Latter-Day Saints is, and for many years last past has been, a voluntary religious society or association, organized and existing in the Territory of Utah, for religious and charitable purposes.

That said petitioners, and the others for whose benefit they file this petition, are members of said church residing in said Territory. That said church became possessed of all the above-described property, in accordance with its established rules and customs, by the voluntary contributions, donations, and dedications of its said members, to be held, managed, and applied to the use and benefit of said church, and for the maintenance of its religion and charities by trustees appointed by said members semi-annually at the general conference or meeting of said members.

That John Taylor, the late trustee so appointed, died on the 25th day of July, 1887, and since his said death no trustee has been appointed.

That said property in the hands of said receiver is claimed adversely to said church, said petitioners and the members thereof, but wholly without right by said plaintiff, and is being wrongfully withheld and diverted by said receiver from the purposes to which it was donated, dedicated,
111 and granted. That said petitioners, and the said members on whose behalf this petition is filed, are equitably the owners of said property and beneficially interested therein, and to prevent the diversion of the same from said religious and charitable purposes of said church to which they donated and granted said property.

Wherefore, your petitioners pray that in case said corporation of the Church of Jesus Christ of Latter-Day Saints should, upon the final hear-

ing of this cause, be held and decreed to be dissolved, an order and decree of this court be made and entered, adjudging and decreeing:

1. That the said property belongs to the individual members of said church, and that they are authorized to appoint a trustee or trustees to hold, manage, and apply such property and money to the purposes for which it was originally given.

2. That the said receiver deliver the possession of said property, together with its proceeds, and income in his hands, to such trustee or trustees as may be named and appointed at a general conference of the members of said church in accordance with its rules and customs.

3. For such other and further relief as may be equitable and just.

J. A. O. BROADHEAD,
F. S. RICHARDS,
LE GRANDE YOUNG,
SHEEKS & RAWLINS,
Solicitors for Intervenors.

(Endorsed:) Title court & cause. Petition in intervention. Rec'd a copy of the within Oct. 8, 1888. Geo. S. Peters, U. S. Att'y. Filed Oct. 8, 1888. E. T. Sprague, clerk.

112 In the supreme court of Utah Territory.

UNITED STATES OF AMERICA
vs.
THE LATE CORPORATION OF THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS ET AL.

And now comes the United States by A. H. Garland, its Attorney-General, and George S. Peters, its attorney for the Territory of Utah, and files this its answer to the petition in intervention filed in the above-entitled cause by Geo. Romney Henry Dinwoodey, James Watson, and John Clark, on behalf of themselves and all others who claim to have been members of the Church of Jesus Christ of Latter-Day Saints.

1. That as to whether the members of said late corporation are mo'e than one hundred thousand in number and so numerous that they cannot without manifest inconvenience be brought before this court, this plaintiff has not and cannot obtain sufficient knowledge and information on which to base a belief, and therefore it neither admits nor denies the same, but it does deny that the petitioners or any other alleged members of the said Church of Jesus Christ of Lat'er-Day Saints, whether the same claim to have been members of the late corporation or of the voluntary religious sect now existing, have any interest separately or in common with regard to the matters set out in said petition, or with regard to the property concerning which said petition is filed.

113 2. It is true, as set out in said petition, that Frank H. Dyer was appointed receiver by this court in the above-entitled cause of action. It is also true that under the order of this court the said receiver has taken possession of and now holds, subject to the orders of this court, the property, real and personal, set out in this petition. It is denied, however, that at the time the property aforesaid was taken possession of by the receiver that the same was the property of the Church of Jesus Christ of Latter-

Day Saints, whether the allegations of said petition in that behalf are intended to apply to the late corporation or to the voluntary religious sect which has existed under the name of the Church of Jesus Christ of Latter-Day Saints since the dissolution of said corporation, as hereinafter set out. It is admitted, however, that prior to the dissolution of said corporation, as shall be hereinafter set out, said property belonged to the corporation of the Church of Jesus Christ of Latter-Day Saints, but since said dissolution there has been no legal owner thereof or successor in trust to said corporation except the United States of America, as is hereinafter set out.

It denies that the Church of Jesus Christ of Latter-Day Saints has been for many years last past a voluntary religious society or association; but it is alleged, on the contrary, that up to the 19th day of February, 1887, said Church of Jesus Christ of Latter-Day Saints existed as a corporation for religious purposes, organized and existing, as is hereinafter set out, and that since said 19th day of February, 1887, at which date said
114 corporation became dissolved, as is hereinafter set out, there has existed a voluntary and unincorporated religious society or sect known by the name of the Church of Jesus Christ of Latter-Day Saints.

It is denied that the corporation of the Church of Jesus Christ of Latter-Day Saints, to which all of said property belonged, acquired the same by voluntary contributions, donations, and dedications of the members of said corporation; and, on the contrary, it is alleged that all of said realty was acquired by purchase, either from the United States Government or otherwise, and that said personalty was acquired by said church largely by purchase and other means, as is hereinafter set out.

It is denied that the receiver in this cause is wrongfully withholding and diverting the property aforesaid from the purposes to which it was donated, dedicated, and granted, and it is denied that the petitioners or any other persons are equitably or otherwise the owners of said property or any portion thereof or beneficially interested therein.

And, further answering said petition, as a special answer thereto the United States of America alleges as follows, to wit:

That on the 19th of Jan., 1855, by an act of the Territorial assembly of the Territory of Utah, the Church of Jesus Christ of Latter-Day Saints became an incorporated body and association for religious and charitable purposes, and from said date continued to be an incorporation up to the 19th day of February, 1887.

That on the first day of July, 1862, the Congress of the United
115 States passed an act entitled "An act to punish and prevent the practice of polygamy in the Territories of the United States and other places, and disapproving and annulling certain acts of the legislative assembly for the Territory of Utah," which said act, among other things, provided in substance and effect that it should not be lawful for any corporation or association for religious or charitable purposes to acquire or hold real estate in any Territory of the United States during the existence of the Territorial government of a greater value than $50,000, and that all real estate acquired or held by such corporation or association contrary to the provisions of said act should be forfeited and escheated to the United States.

That on the 3rd day of March, 1887, the Congress of the United States passed an act entitled "An act to amend an act entitled 'An act to amend section 5352 of the Revised Statutes of the United States in reference to bigamy, and for other purposes,' approved March 22nd, 1882," and in and by which said act it was provided, amongst other things, that it should be the duty of the Attorney-General of the United States to institute and prosecute proceedings to forfeit and escheat to the United States the property of all corporations obtained or held in violation of the act of July 1st, 1862, above set out. And it was, moreover, provided by said act of Congress of February 19th, 1887, that the act of the legislative assembly of the Territory of Utah, hereinbefore referred to, incorporating the Church of Jesus Christ of Latter-Day Saints, was
116 disapproved and annulled, and that said corporation should be dissolved, and that it should be the duty of the Attorney-General of the United States to institute proceedings in the supreme court of the Territory of Utah for the purpose of executing the provisions of said act and to wind up the affairs of said corporation, and for other purposes set out in said act.

Wherefore, the said corporation of the Church of Jesus Christ of Latter-Day Saints become and was a defunct and dissolved corporation.

That in pursuance of the act last aforesaid the Attorney-General of the United States did, on the 30th day of July, 1887, commence a suit in the name of the United States in the supreme court of said Territory for the purpose of having the dissolution of said corporation judicially ascertained and declared for the winding up of its affairs and the distribution of its estate according to law, for the appointment of a receiver pending the final determination of said suit for the purpose of collecting, managing, and preserving all of the property of said dissolved corporation.

That on the 7th day of November, 1887, the supreme court of the Territory of Utah, in the suit above named, appointed Frank H. Dyer receiver for the purposes aforesaid, and in accordance with the order of said court the said receiver has heretofore taken possession of and now holds the real and personal property set out in the petition of intervention aforesaid.

And it is further alleged that the said United States of America
117 has heretofore filed in the district court of the third district of the Territory of Utah a proceeding in the nature of an information against all of the real property set out in said petition of intervention for the purpose of having the same declared forfeited and escheated to the United States of America by reason and on account of the acquisition of the same by the said corporation of the Church of Jesus Christ of Latter-Day Saints in violation of and contrary to the provisions of the said act of July 1st, 1862, and said proceedings, by way of information, are now pending and undetermined in said court; and the said United States of America here shows to this honorable court that said real property is and has all become forfeited to said United States, as is shown in said information.

And it is further shown and alleged to this honorable court that the said corporation of the Church of Jesus Christ of Latter-Day Saints was in its nature and by its statute of incorporation a religious corporation for the purposes of promulgating, spreading, and upholding the principles,

practices, teachings, and tenets of said church, and that from the time of the organization of said corporation up to February 19th, 1887, when said corporation become dissolved, it never had any other corporate objects, purposes, or authority; never had any capital stock whatsoever or stockholders, nor were there ever any persons who were pecuniarily or financially interested in the property of said corporation, nor have there ever been any natural persons who were authorized under its act and charter of incorporation or otherwise to take or hold any personal property
118 or estate for said corporation, except such trustees as were provided for by its statute of incorporation, and the power of appointing such trustees wholly ceased and become extinct at the date of the dissolution of said corporation; that at the date of the dissolution of said corporation and prior thereto the said personal property had been used for and devoted exclusively to the promulgation, spread, and maintenance of the principles, practices, teachings, and tenets of the said Church of Jesus Christ of Latter-Day Saints, amongst which the doctrine and practice of polygamy or plurality of wives was a fundamental and essential doctrine, tenet, and practice of said church, and the same was opposed and contrary to good morals, public policy, and the laws of the United States, and that the use made of said personal property was largely for the purpose of upholding and maintaining said doctrine and practice of polygamy and for the purpose of violating the laws of the United States.

And it is further alleged that since the dissolution of said corporation there has existed a voluntary and unincorporated religious sect known as the Church of Jesus Christ of Latter-Day Saints which has comprised the great body of individuals named in said intervention, including the intervenors whose names are set out, who formerly composed the membership of said corporation, and the organization and general government of said voluntary religious sect and the principles, doctrines, teachings, and tenets of the same included the doctrine and practice of polygamy, and have been substantially the same as those of the said corporation,
119 and said voluntary religious sect has upheld and maintained as strongly and as persistently the unlawful and immoral practice and doctrine of polygamy as the said corporation upheld and maintained the same, and any uses, purposes, or trusts to which said personal property could be devoted in accordance with the original purposes and trusts to which it was dedicated would be opposed to good morals, public policy, and contrary to the laws of the United States.

And it is further alleged in answer to said petition in intervention that the nature of the said corporation of the Church of Jesus Christ of Latter-Day Saints was such that there were no stockholders who were in any wise pecuniarily or financially interested in the personal property held by said corporation, and that said corporation having become dissolved there are no natural persons or corporations who are in any wise legally entitled to any portion of said personalty as successors in interest to said corporation of the Church of Jesus Christ of Latter-Day Saints. And it is further alleged that all definite, ascertained, and legal trusts to which said personalty was dedicated an' for which it was originally acquired have totally failed and become extinct, and that the only trusts or purposes to which this court could in anywise devote such personalty are illegal and immoral, as hereinbefore set out, and it is therefore alleged that

the said personalty is now in the hands of the receiver of this
120 court, as aforesaid, without any legal successors in interest or without any legal claimant, except the United States, and without any trusts being in existence to which this court could apply the same; that by operation of law the said personalty and all thereof has become escheated to the United States of America.

And for a further special answer to said petition in intervention and in answer to that portion thereof which alleges that said personalty was acquired by the voluntary contributions, donations, and dedications of the members of the corporation of the Church of Jesus Christ of Latter-Day Saints, it is alleged that such is not true. And it is shown to this court that the late corporation, by virtue of its corporate existence and power, carried on business to a very wide extent and in many different fields, and whilst it is true that a large amount of personalty in the shape of tithings were paid to said church each year by the members thereof and in accordance with its rules and regulations, yet the personalty now in the hands of said receiver is in no part made up or consisting of voluntary contributions or tithings paid in as aforesaid, but it is all of it property which was acquired by said Church of Jesus Christ of Latter-Day Saints in the course of trade, by purchase, and for a valuable consideration, and it held the same in its corporate capacity absolutely and entirely, independent of any individual members of said corporation, and upon the trust and for the uses and purposes hereinbefore set out, and which said uses and purposes were, as has been alleged, in whole or in part, immoral and illegal.

121 And, now having answered fully the petition of intervention herein, it is prayed of this honorable court that said petition of intervention be denied and that an order and decree be entered retaining the real estate set out in said petition in the hands of the receiver of this court pending the determination of the information for the forfeiture of the same, hereinbefore set out, and that a decree be entered by this court declaring the personalty set out in said petition to have become the property of the United States of America by escheat and operation of law.

By GEO. S. PETERS,
U. S. Att'y.

(Endorsed:) Title court and cause. Answer of pl'ff to petition of Romney and others. Filed Oct. 8, 1888. E. T. Sprague, clerk.

122 In the supreme court of Utah Territory.

THE UNITED STATES OF AMERICA, PLAINTIFF,
vs.
THE LATE CORPORATION OF THE CHURCH OF Jesus Christ of Latter-Day Saints *et al.*, defendants.

In the matter of the intervening petition of George Romney, Henry Dinwoodey, James Watson, and John Clark.

Replication of said intervenors.

Now come the said intervenors and for replication to the answer of the United States of America to the matter and things set forth in said inter-

vening petition say that they will aver and prove the said petition to be true, and that the answer of said United States of America is untrue, uncertain, and insufficient, all of which matters and things this replicant is to aver and prove as the court shall direct, and they pray as in their said petition they have already prayed.

JAS. O. BROADHEAD,
Sol. for Intervenors.

(Endorsed:) Title, court, and cause. General replication to plaintiff's answer to intervenors' petition. Service of copy ack. this 8th day of October, 1888, Geo. S. Peters, U. S. attorney. Filed Oct. 8, 1888. E. T. Sprague, clerk.

123 Supreme court of the Territory of Utah.

UNITED STATES OF AMERICA, PLAINTIFF,
vs.
THE LATE CORPORATION OF THE CHURCH OF Jesus Christ of Latter-Day Saints, John Taylor, late trustee in trust, Wilford Woodruff, Lorenzo Snow, Erastus Snow, Franklin D. Richards, Brigham Young, Moses Thatcher, Francis M. Lyman, John Henry Smith, George Teasdell, Heber J. Grant, & John W. Taylor, late assistant trustees in trust of said corporation, William B. Preston, Robert T. Burton, John R. Winder, Francis Armstrong, Jesse W. Fox, jr., and Theodore McKean, defendants.

Statement of facts.

It is hereby stipulated and agreed that the following are facts in the above-entitled cause:

1st. Salt Lake City was settled in 1847, and in that year said city was located and laid out into streets, plats, blocks, and lots, which were duly named and numbered. Among these lots and blocks were the following, viz: Block eighty-seven (87), lots 3, 4, 5, and 6 in block eighty-eight (88), and lot six (6) in block seventy-five (75), all in Plat "A" of Salt Lake City survey.

124 2nd. Salt Lake City was organized as a municipal corporation under the laws of the provisional government of the State of Deseret in 1850, and in 1855 the acts incorporating said city were re-enacted and approved by the legislative assembly of the Territory of Utah; ever since which time Salt Lake City has been and still is a municipal corporation.

3rd. All of the above-described land was a part of the public domain at the time of settlement thereon, and continued to be such until the 21st day of November, 1871, when the said land was entered by the mayor of said city, along with other lands, under the act of Congress of March 2nd, 1867, entitled "An act for the relief of the inhabitants of cities and towns upon the public lands."

4th. In the year 1847 Brigham Young was president of the Church of Jesus Christ of Latter-Day Saints, and so remained president until about August 29th, 1877. From the year 1850 until the year 1873 Brigham Young was trustee in trust of the Church of Jesus Christ of Latter-Day Saints, and as such was the legal custodian of its property. From the month of May, 1873, till the month of September, 1875, George A. Smith was trustee in trust for said church, and in such capacity was the legal custodian of its property. From the month of October, 1875, till August 29th, 1877, Brigham Young was trustee in trust of said Church of Jesus Christ of Latter-Day Saints, and as such was the legal custodian of its property. From the month of October, 1877, until the said act of Congress of February 19th, 1887, took effect, John Taylor was
125 trustee in trust of said church, and he claimed to be such trustee in trust up to the time of his death.

5th. Since the passage of said act of Congress of February 19th, 1887, the church of Jesus Christ of Latter-Day Saints has existed as a voluntary religious sect, of which the said Wilford Woodruff is the acting president, and has had duly designated and appointed by the probate court of Salt Lake County, in said Territory, in pursuance of the act of Congress aforesaid, the following named trustees: William B. Preston, Robert T. Burton, and John R. Winder, to take the title to and have and hold such real estate as shall be allowed said religious sect by law for the erection and use of houses of worship, parsonages, and burial grounds.

6th. At the time of the passage of said act of Congress of February 19th, 1887, the said corporation owned, held, and possessed the real estate hereinafter described, all of which is situated in the said Territory of Utah.

8th. Block eighty-seven (87), Plat A, of Salt Lake City survey, known as the "Temple Block," was taken possession of by the agents of the said Church of Jesus Christ of Latter-Day Saints, then existing as a voluntary, unincorporated religious sect, when Salt Lake City was first laid out and surveyed in 1848, and since said date has been in the possession of said church as a voluntary religious sect and as a corporation, and has been used exclusively for the purpose of the worship of God, according to the doctrines and tenets of the church of Jesus Christ of Latter-
126 Day Saints. The legal title to said land was acquired by deed from the mayor of Salt Lake City, and vested in John Taylor as trustee in trust for said church of Jesus Christ of Latter-Day Saints from April 10th, 1878, till June 30, 1887, when he attempted to convey the same to William B. Preston, Robert T. Burton, and John R. Winder, as trustees, by a certain instrument in writing, a copy of which is hereto attached, marked Exhibit A. Said property is admitted, for the purpose of this suit, and none other, to be worth $500,000.00.

9th. The east half of lot six (6), in block seventy-five (75), of Salt Lake City survey, described as follows: Commencing at the northeast corner of said lot, and running thence south ten (10) rods, thence west ten (10) rods, thence north ten (10) rods, thence east ten (10) rods to the place of beginning, known as the Gardo House and lot, worth $50,000.00, was owned by Brigham Young individually at the time of his death in 1877, and his executors transferred and conveyed said premises to John Taylor, as trustee in trust for the corporation of the Church

of Jesus Christ of Latter-Day Saints, for a valuable consideration, pursuant to the power in them vested by the will of the said Brigham Young; subsequently, on the 24th day of April, 1878, said John Taylor, as such trustee in trust, transferred and conveyed said premises to Theodore McKean on a secret trust for said corporation, who held the same upon said trust until July, 1887, when he attempted to convey the same
127 to William B. Preston, Robert T. Burton, and John R. Winder, trustees, by a certain instrument in writing, a copy of which is hereto attached, marked Exhibit B; said premises were used and occupied by John Taylor, president of said church, from 1878 up to the time of his death as a residence.

10th. A part of lot six (6), in block seventy-five (75), Plat "A," of Salt Lake City survey, described as follows: Commencing at a point ten (10) rods west of the northeast corner of said lot, and running thence south ten (10) rods, thence west seven (7) rods, thence north ten (10) rods, thence east seven (7) rods to the place of beginning, known as the "Historian Office" and grounds, worth $20,000.00, was taken possession of by Albert P. Rockwood in 1848, and was a part of the public domain and continued to be such up to the time when the town site of Salt Lake City was entered as aforesaid; in 1855 the Church of Jesus Christ of Latter-Day Saints, by its agents, purchased the said Rockwood's claim to the above-described premises, and at its own cost and expense erected thereon a building which has ever since been known as the Historian Office; said building was large enough to accommodate the historian's family and furnish an office for him; from the year 1848 until the time of his death in 1875 the said George A. Smith was the historian of said church, and lived in said building with his family, and had the custody of the books, papers, and
128 records of said church relating to its history and the public acts of its officers and members; the same have always been kept in said building from the time of its construction until the present time at the cost of said church, and such office is and has been necessary for the use of said historian in the discharge of his duties; in 1872 said George A. Smith obtained the title to said premises from the mayor of Salt Lake City under the town-site law, and after his death the same was conveyed to his wife and one of his granddaughters, who afterwards transferred and conveyed the same to Theodore McKean for a valuable consideration, and the latter ever since has held and now holds the same on a secret trust for the use and benefit of said corporation; and said tract of land lies immediately west of and adjoining the Gardo House and premises.

11th. A part of block eighty-eight (88), Plat "A," Salt Lake City survey, bounded and described as follows: Commencing at a point four (4) rods north of the southwest corner of lot four (4) in said block, and running thence north sixteen (16) rods; thence east twenty (20) rods; thence south twelve and one-half ($12\frac{1}{2}$) rods; thence west fourteen (14) rods; thence south three and one-half ($3\frac{1}{2}$) rods; thence west six (6) rods to the place of beginning, known as the Tithing Office property, worth $50,000.00, was taken possession of by the agents of said Church of Jesus Christ of Latter-Day Saints when Salt Lake City was first laid out and surveyed in 1848, and ever since that time has been used and
129 occupied by said church as a voluntary sect until it became incorporated, and then as a corporation, in receiving and disbursing

tithing and voluntary contributions of property. Prior to July 1st, 1862, buildings and other improvements of considerable value had been built thereon by said church; at the time said property was taken possession of as aforesaid it was a part of the public domain, and continued to be such until the 21st of November, 1871, when it was entered along with other lands under the town-site law by the mayor of Salt Lake City. Brigham Young, who was then president and trustee in trust of said corporation, claimed said land under the town-site law, and it was conveyed to him by Daniel H. Wells, mayor of Salt Lake City; in November, 1873, Brigham Young transferred and conveyed said property to George A. Smith, as trustee in trust of the corporation of the Church of Jesus Christ of Latter-Day Saints and his successor in office; on the death of said George A. Smith, the legal title to said premises vested in Brigham Young as such successor, and the executors of *of* said Brigham Young transferred and conveyed said property to John Taylor as the trustee in trust of said corporation, who, in April, 1878, transferred and conveyed the same to Edward Hunter upon a secret trust for the use and benefit of said corporation; said Edward Hunter, afterwards, to wit, on the 24th day of April, 1878, transferred and conveyed the same to Robert T. Burton on a secret trust for said corporation; on the 2nd day of July, 1887, the said
130 Robert T. Burton attempted to convey the same to William B. Preston, John R. Winder, and himself, as trustees, by a certain instrument in writing, a copy of which is hereto attached, marked Exhibit "C."

12th. The south half of lot five (5) in block eighty-eight (88), Plat A, Salt Lake City survey, containing one hundred square rods of land, worth $25,000.00, was taken possession of in the year 1848 by Newell K. Whitney, then presiding bishop of said Church of Jesus Christ of Latter-Day Saints; some time in the year 1856 the said church, by its agents, took possession of said land and placed thereon yards and corrals, and have continued to use the same until the present time; the said Church of Jesus Christ of Latter-Day Saints, by its trustee, Brigham Young, filed an application in the proper court under the town-site law for a title to said land, which was contested by the heirs of said Newell K. Whitney; the court awarded the title to the said premises to Brigham Young, trustee as aforesaid, and afterwards, in the year 1872, said Brigham Young, as such trustee, obtained a deed from the heirs of said Newell K. Whitney to said land, and in consideration thereof paid them seven thousand dollars; the south half of lot six (6) in said block eighty-eight (88) was taken possession of in the year 1848 by Horace K. Whitney; some time in the year 1856 the Church of Jesus Christ of Latter-Day Saints, by its agents, took possession of said land, and placed corrals and other improve-
131 ments thereon, and have continued to occupy and possess the same until the present time; the said Church of Jesus Christ of Latter-Day Saints, by its trustee, Brigham Young, filed an application in the proper court for a title to said land under the town-site act, and the said premises were awarded to him as such trustee, although contested by the heirs of the said Horace K. Whitney; about the year 1872 the said Brigham Young, trustee in trust, obtained a deed from said Horace K. Whitney of the aforesaid premises, and paid him therefor the sum of two thousand dollars.

13th. In addition to the above-described real estate, the said corporation, at the time of the passage of said act of Congress of February 19th, 1887, owned, held, and possessed the following-described real estate: All that portion of lots 10, 11, 12, 13, and 14, block 38, Big Field Ten-acre Plot, Territorial survey, containing 16.72 acres, which is included within the limits of the northeast corner of section twenty-four; also the east half of the northeast quarter; also parts of lots one and five, commencing at a point south 14 rods from the northeast corner of lot 1, section twenty-three; thence west 48.4 rods; thence south 96 rods; thence south 19 degrees east 11.2 rods to the west bank of water ditch; thence along the west bank of said water ditch south 25 degrees west 4 rods to the southeast corner of the northeast quarter of section twenty-three; thence east 47 rods, more or less, to the southeast corner of lot five; thence north 146 rods to the place of beginning, containing 73.35 acres, more or less; also one-half of the street on the
132 north side of all the above-described land, containing 1.62½ acres, more or less; also part of the southwest quarter of section twenty-four, commencing at a point twenty-eight rods west from the southeast corner of said quarter section; thence running north 30 degrees east fifty-six rods to the east line of said quarter section; thence north one hundred eleven and one-half rods to the center of said section; thence west one hundred and sixty rods; thence south one hundred and sixty rods; thence east one hundred and thirty-two rods to place of beginning, containing one hundred fifty-six and thirty-eight hundredths acres, more or less; also lots six and nine, in section twenty-three, and lots one and four, in section twenty-six, containing one hundred and twenty-six acres, more or less; also part of the southeast quarter of section twenty-three, commencing at the northeast corner of said quarter section, th'nce running south one hundred and sixty rods; thence west one hundred and sixty rods; thence north one hundred and four rods, more or less, to the river Jordan; thence down said river nine rods, more or less; thence east two rods; thence along the east bank of water ditch north 25 degrees east fifty-six and two-tenths rods; thence east one hundred and twenty-seven rods to place of beginning, containing one hundred fifty-four and twenty-two hundredths acres, more or less; also part of the southeast quarter of section twenty-six, containing one hundred and twenty-seven acres, more or less; also part of the northwest quarter of section twenty-four, commencing fourteen rods south of the northeast corner of said quarter
133 section; thence running west one hundred and sixty rods; thence south one hundred and forty-six rods; thence east one hundred and sixty rods; thence north one hundred and forty-six rods to place of beginning, containing one hundred and forty-six acres, more or less; also one-half of the street on the north side of said quarter section, containing two acres; also part of the northwest quarter of section twenty-five, commencing at the southwest quarter of said quarter section, thence running north one hundred and sixty rods; thence east one hundred and thirty-two rods; thence south 30 degrees west ninety-two rods; thence south sixty-nine and six-tenths rods; thence west fifty rods; thence south twelve and three-tenths rods; thence west thirty six rods to place of beginning, containing ninety-three and thirty-eight one-hundre'ths acres, more or less; also the northeast quarter of section twenty-six, containing one hundred

and sixty acres; all of the above-described land is situated in township one south, of range one west, United States survey of Utah, excepting, however, therefrom the following-described tract of land conveyed to the Denver & Rio Grande Western Railway Company by deed dated February 7, 1882, beginning in the center of the D. & R. G. W. R. R. track, twelve rods south and thirty rods east from the northwest corner of the northwest quarter of section twenty-four, town. one south, range one west, Salt Lake meridian; thence east fifty feet; thence south parallel with and fifty feet distant from the center of said railroad track forty-three
134 and eighty-one and six-tenths one-hundre'ths feet to a 2-degree curve; thence southerly on the east side along said 2-degree curve and fifty feet from center of said railroad track seven hundred and thirty-one fee'; thence south 14¾ degrees east 2,535½ feet; thence west 100 feet; thence north 14¾ degrees west 2,535½ feet; thence northerly along said 2-degree curve on the west side thereof and fifty feet distant from the center of said railroad track 731 feet; thence north 4,381.6 feet; thence east 50 feet to place of beginning, containing 70.58 acres of land, lying within the limits of the west half of section twenty-four and the west half of the northwest quarter of section twenty-five, township and range aforesaid, said deed being recorded February 7, 1882, in Book S of Deeds & Transfers, pages 451 and 452, records of Salk Lake County, Utah Territory. Said church farm is worth $110,000.00.

Also an undivided one-half of the following-described tracts of land: The south half of the southeast quarter, the southeast quarter of the southwest quarter and lot four, section eighteen, and the north half of the northeast quarter in section nineteen; all of said land being in township three north, range six east, in Summit County, Utah Territory.

Said last-named property is worth $30,000.00.

135 The two pieces of real estate last above described were acquired by said corporation after the first day of July, 1862, by purchase, but the legal title thereof was at all times held by persons in trust for said corporation upon a secret trust and not by the corporation itself.

15th. At the time of the passage of the act of Congress of February 19th, 1887, the said corporation owned, held, and possessed the following-described personal property, to wit:

One large safe, one medium-sized iron safe, 25 armchairs, 11 rotary chairs, 10 upholstered chairs, two desks, one letterpress, 800 shares of $100 each of the capital stock of the Salt Lake Gas Company, 4,732 shares of $100 each of the capital stock of the Deseret Telegraph Company, one promissory note, dated March 2nd, 1887, due and payable to John Taylor, trustee in trust or order, two years after date, calling for the sum of $13,333.32, bearing 6 per cent interest from date, signed by Sharp and Little; one promissory note, dated March 2nd, 1887, due and payable to John Taylor, trustee in trust, or order, two years after date, and calling for $1,666.66, with 6 per cent interest from date, signed Le Grand Young; one promissory note, dated March 2nd, 1887, payable to the order of John Taylor, trustee in trust, in two years from date, calling for $4,833.33 with 6 per cent interest from date, signed by James Jack; one promissory note, dated March 2nd, 1887, payable to John Taylor, trustee in trust,
136 or order, in two years from date, calling for $5,000, with six per cent interest from date, and signed by H. B. Clawson; thirty thou-

sand one hundred and fifty-eight (30,158) sheep, $237,666.15 money, proceeds of orders of miscellaneous property. Since said personal property came into possession of the receiver heretofore appointed in this cause he has collected as rent from the said real estate $2,850, as dividends on said gas stock $4,900, as interest on said money $2,233.60.

137 That the said corporation of the Church of Jesus Christ of Latter-Day Saints, was in its nature and by its statute of incorporation, a religious and charitable corporation for the purpose of promulgating, spreading, and upholding the principles, practices, teachings, and tenets of said church; and for the purpose of dispensing charity subject and according to said principles, practices, teachings, and tenets; and that from the time of the organization of said corporation up to the time of the passage of said act of February 19th, 1887, it never had any other corporate objects, purposes, and authority; never had any capital stock or stockholders, nor have there ever been any natural persons who were authorized, under its act and charter of said incorporation, to take or hold any personal property or estate of said corporation except the trustees provided for by said statute of incorporation. The said personal property had been accumulated by said corporation prior to the passage of said act of Congress of February the 19th, 1887; such accumulation having extended over a period of twenty years or more; and that prior to and at the time of the passage of said act it had been used for and devoted to the promulgation, spread, and maintenance of the doctrines, teachings, tenets, and practices of the said Church of Jesus Christ of Latter-Day Saints, and the doctrine of polygamy, or plurality of wives, was one of the said doctrines, teachings, tenets, and practices of said church corporation, but only

138 a portion of the members of said corporation, not exceeding twenty per cent of the marriageable members, male and female, were engaged in the actual practice of polygamy. That since the passage of the said act of Congress of February the 19th, 1887, the said voluntary religious sect known as the Church of Jesus Christ of Latter-Day Saints has comprised the great body of individuals who formerly composed the membership of said corporation, and the organization, general government, doctrines, and tenets of said voluntary religious sect have been and now are substantially the same as under said corporation. That certain of the officers of said religious sect, regularly ordained, and certain public preachers and teachers in good standing, of the doctrines and tenets of said sect have, since the passage of said act of Congress of February, the 19th, 1887, promulgated, taught, spread, and upheld the same doctrines, tenets, and practices, including the doctrine of polygamy, as were formerly promulgated, taught, and upheld by said corporation; and the said teachings of the said officers, preachers, and teachers have not been repudiated or dissented from by said voluntary religious sect, nor have they created any division of schism. That any dedication or setting aside of said personal property to the uses and purposes of, or in trust for the member of the corporation of the Church of Jesus Christ of Latter-Day Saints, alleged to have been dissolved, or of any of them, would practically and in effect be a dedication and setting aside of said personal property to the

139 uses and for the purposes of and in trust for what is claimed to be the unincorporated religious sect known as the Church of Jesus Christ of Latter-Day Saints.

That all of the above-described property, real and personal, is now in the possession of Frank H. Dyer, receiver of this court.

That at the time of the commencement of this suit all of the personal property above set out was in the possession of William B. Preston, who held it in trust and for the benefit of said corporation.

That all of the above statements and facts shall be accepted by the supreme court of the Territory of Utah in deciding and passing upon this case, as fully admitted, and with the same force and effect as though they were sustained by depositions regularly taken before an examiner of this court.

HENRY W. HOBSON,
Special U. S. Attorney.
GEO. S. PETERS,
U. S. Attorney for Utah Territory.
JAS. O. BROWNHEAD.
FRANKLIN S. RICHARDS.
SHEEKS & RAWLINS.
LE GRAND YOUNG,
Solicitor & Attorney for Defendant.

140 (Endorsements:) Supreme court of Utah Territory. United States of America, plaintiff, vs. The Late Corporation of Church of Jesus Christ, etc., et al., defendants. Statements of facts. Filed October 8th, 1888. E. F. Sprague, clerk.

141 In the supreme court of Utah.

THE UNITED STATES OF AMERICA, PLAINTIFF,
vs.
THE LATE CORPORATION OF THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS *et al.*, defendants.

Findings of fact by the court upon the pleadings and evidence and final decree.

This cause coming on this day for final hearing and determination by the court, upon the bill of complaint herein, the answers of the several defendants and the replications thereto, the petitions of William B. Preston, Robert T. Burton and John R. Winder, trustees, for the unincorporated sect of the Chuch of Jesus Christ of Latter-Day Saints, the petition of intervention by George Romney, Henry Dinwoodey, James Watson, and John Clark, on behalf of themselves and others, and upon the answers to said petitions, and upon the evidence on file in this cause, including the agreed statement of facts entered into and accepted as evidence by the consent of all parties to this cause, and each and all of the parties to this cause being represented by counsel, and the court having duly considered the same, and being fully advised in the premises, it doth find and declare the following facts to have been established in this cause:

142 1st. That the Church of Jesus Christ of Latter-Day Saints was, from the 19th day of January, 1855, to the 3rd day of March, A. D. 1887, a corporation for religious and charitable purposes, duly organized and existing under and in pursuance of an ordinance enacted by the

legislature of the Territory of Utah, and approved by the gove'nor thereof on the said 19th day of January, A. D. 1855, a copy of which ordinance is made a part of the complaint herein.

2. That on the 19th day of February, A. D. 1887, the Congress of the United States passed an act entitled "An act to amend section 5352 of the Revised Statutes of the United States in reference to bigamy and for other purposes, approved March 22nd, 1882," which purported to disapprove, repeal, and annul the said charter and act of incorporation of the corporation of the Church of Jesus Christ of Latter-Day Saints aforesaid, and passed as aforesaid.

3. That immediately before the passage of said act of Congress of February 19th, 1887, the said John Taylor was, and for a long time prior thereto, had been, the qualified and acting trustee in trust of said corporation of the Church of Jesus Christ of Latter-Day Saints; that after the passage of said act of Congress of February 19th, 1887, the said John Taylor claimed to hold and continued to exercise the powers conferred upon said Church of Jesus Christ of Latter-Day Saints by said act of incorporation, until his death, which occurred on the 25th day of July, A. D. 1887.

4. That at the date of the passage of said act of Congress of Feb-
143 ruary 19th, A. D. 1887, and for a long time prior thereto, there were no assistant trustees of said corporation, none having been elected, appointed, or qualified since the year 1877; that said Wilford Woodruff, Lorenzo Snow, Erastus Snow, Franklin D. Richards, Brigham Young, Moses Thatcher, Francis M. Lyman, John Henry Smith, George Teasdell, Heber J. Grant, and John W. Taylor were, at the commencement of this suit, counsellors and advisers of the said John Taylor, and continued to his death counselling and advising him respecting the management, use, and control of the property he'einafter described.

5. That since the passage of said act of Congress of February 19th, 1887, the Church of Jesus Christ of Latter-Day Saints has existed as a voluntary religious sect, of which the said Wilford Woodruff is the acting president, and it has had duly designated and appointed by the probate court of Salt Lake County in said Territory, in pursuance of the act of Congress aforesaid, the following-named trustees: William B. Preston, Robert T. Burton, and John R. Winder, to take the title to and hold such real estate as shall be allowed said religious sect by law for the erection and use of houses of worship, parsonages, and burial grounds.

6. That at the time of the passage of said act of Congress of February 19th, 1887, there were no outstanding debts of or claims against said corporation, so far as appears to the court from the evidence herein.

7. That at the time of the passage of the act of Congress of February 19th, 1887, the said corporation owned, held, and possessed the following real estate in said Territory, to wit:

144 1. All of block eighty-seven (87) in Plat "A," Salt Lake City survey, in Salt Lake County, Utah Territory, known as the Temple Block, of the value of $500,000.00.

2. All the east half of lot six (6), block seventy-five (75), Plat A, Salt Lake City survey, Salt Lake County, Utah Territory, and bounded as follows: Commencing at the northeast corner of said lot, thence south

ten (10) rods; thence west ten (10) rods; thence north ten (10) rods; thence east ten (10) rods to the place of beginning known as the Gardo House and grounds, of the value of $50,000.

3. Part of the west half of lot six (6), block seventy-five (75), Plat A, Salt Lake City survey, Salt Lake County, Utah Territory, and bounded as follows: Commencing at a point ten (10) rods west of the northeast corner of said lot and running thence south ten (10) rods; thence west seven (7) rods; thence north ten (10) rods; thence east seven (7) rods to the place of beginning, known as the Historian's Office and grounds, and is of the value of $20,000.

4. Part of lots three (3) and four (4), in block eighty-eight (88), as the same are platted and designated on Plat "A," Salt Lake City survey, County of Salt Lake, Utah Territory, and bounded as follows: Commencing at a point four (4) rods north of the southwest corner of said lot (4); running thence north sixteen (16) rods; thence east twenty (20) rods; thence south twelve and one-half rods; thence west fourteen (14)
145 rods; thence south three and one-half ($3\frac{1}{2}$) rods; thence west six (6) rods to the place of beginning, and being part of what is known as the Tithing Office and grounds, and is of the value of $50,000.

5. All the south half ($9\frac{1}{2}$) of lots five (5) and six (6), in block eighty-eight (88), as the same are platted and designated in Plat "A," Salt Lake City survey, in the County of Salt Lake, Utah Territory, said tract containing two hundred squares rods of land, more or less, and being a part of what is known as the Tithing Office and grounds, and is of the value of $25,000.

6. All those certain tracts or parcels of land situate lying and being in Salt Lake County, Territory of Utah, known as the "Church Farm," described and bounded as follows, to wit:

All that portion of lots 10, 11, 12, 13, and 14, block 38, Big Field Ten-Acre Plot Territorial survey, containing $16\frac{72}{100}$ acres, which is included within the limits of the NE. $\frac{1}{4}$ of section 24. Also the E. $\frac{1}{2}$ of the NE. $\frac{1}{4}$, also parts of lots 1 and 5, commencing at a point south 14 rods from the NE. corner of lot 1, section 23; thence west $48\frac{4}{10}$ rods; thence S. 96 rods; thence S. 19 deg. E. 11, and $\frac{2}{10}$ rods to the west bank of water ditch; thence along the west bank of said water ditch south 25 deg., west 44 rods, more or less, to the south line of the NE. $\frac{1}{4}$ of section 23; thence east 47 rods, more or less, to the SE. corner of lot 5; thence N. 146 rods to place of beginning, containing $73\frac{35}{100}$ acres, more or less.

Also $\frac{1}{2}$ of the street on the N. side of all the above-described land, containing one and $\frac{62}{100}\frac{1}{2}$ acres, more or less.

146 Also part of the SW. $\frac{1}{4}$ of section 24, commencing at a point 28 rods west from the SE. corner of said $\frac{1}{4}$ section; thence running north 30 deg., E. 56 rods to the east line of said $\frac{1}{4}$ section; thence north $111\frac{1}{2}$ rods to the center of said section; thence W. 160 rods; thence south one hundred and sixty rods; thence east 132 rods to place of beginning, containing $156\frac{38}{100}$ acres, more or less.

Also lots 6 and 9, in section 23, and lots 1 and 4, in section 26, containing 127 acres, more or less; also a part of the SE. $\frac{1}{4}$ of section 23, commencing at the NE. corner of said quarter section; thence running south 160 rods; thence west 160 rods; thence N. 104 rods, more or less, to the river Jordan; thence down said river 9 rods, more or less; thence

east 2 rods; thence along the east bank of water ditch north 25 deggrees, east $56\frac{2}{10}$ rods; thence east 127 rods to place of beginning, containing $154\frac{22}{100}$ acres, more or less. Also part of the southeast $\frac{1}{4}$ of section 26, containing 127 acres, more or less. Also part of the NW. $\frac{1}{4}$ of section 24, commencing 14 rods S. from the NE. corner of said $\frac{1}{4}$ section; thence running west 160 rods; thence south 146 rods; thence east 160 rods; thence N. 146 rods to place of beginning, containing 146 acres, more or less. Also $\frac{1}{2}$ of the street on the N. side of said quarter-section, containing two acres. Also part of the NW. $\frac{1}{4}$ of section 25, commencing at the SW. corner of said $\frac{1}{4}$ section; thence running N. 160 rods; thence E. 132 rods; thence south 30 degrees, west 92 rods; thence S. $69\frac{6}{10}$ rods; thence west 50 rods; thence south $12\frac{3}{10}$ rods; thence west 36 rods to place of
147 beginning, containing $93\frac{38}{100}$ acres, more or less.

Also the NE. $\frac{1}{4}$ of section 26, containing 160 acres; all of the above-described lands are situated in township one (1) south, of range one (1) west, United States survey of Utah.

Excepting, however, therefrom the following-described tract of land conveyed to the Denver and Rio Grande and Western Railway Company by deed dated February 7th, 1882: Beginning in the center of the D and R. G. W. R. R. track 12 rods south and 30 rods east from NW. corner of NW. $\frac{1}{4}$ of section 24, township one (1) south, range one (1) west, Salt Lake meridian; thence east 50 feet; thence south parallel with and 50 feet distant from the center of said R. R. track $4,381\frac{6}{10}$ feet, to a 2-degree curve; thence southerly on the east side along said 2-degree curve and fifty feet from center of said R. R. track 731 feet; thence S. $14\frac{3}{4}$ degrees, E. $2,535\frac{1}{2}$ feet; thence west 100 feet; thence north $14\frac{3}{4}$ degrees, W. $2,535\frac{1}{2}$ feet; thence northerly along said 2-degree curve on west *die* thereof, and 50 feet distant from the center of said R. R. track, 731 feet; thence north $4,381\frac{6}{10}$ feet; thence east 50 feet to place of beginning, containing $17\frac{566}{100}$ acres of land, lying within the limits of the W. $\frac{1}{2}$ of section 24 and W. $\frac{1}{2}$ NW. $\frac{1}{4}$ of section 25, township and range aforesaid, said deed being recorded February 7th, 1882, in book S of deeds and transfers, pages 451 and 452, records of Salt Lake County, U. T. That said property is known as the Church farm, and is of the value of $110,000.

7. The undivided half of the following-described tracts of land:
148 The south half ($\frac{1}{2}$) of the southeast quarter ($\frac{1}{4}$), the southeast quarter ($\frac{1}{4}$) of the southwest quarter ($\frac{1}{4}$) and lot four (4) section eighteen (18) and the north half ($\frac{1}{2}$) of the northeast quarter ($\frac{1}{4}$) in section nineteen (19); all of said land is in township (3) north of range six (6) east, in Summit County, Utah Territory, of the value of $30,000.

The legal title to the real estate first above described, known as the Temple Block at the time said act of February 19th, 1887, went into effect, was in John Taylor as trustee in trust for the said corporation, which said trustee in trust subsequently and on the 30th day of June, 1887, attempted to convey the same to William B. Preston, Robert T. Burton, and John R. Winder, as trustees, by a certain instrument in writing in the words and figures following, to wit:

This indenture, made on this thirtieth day of June, in the year of our Lord one thousand eight hundred and eighty-seven, by and between John Taylor, trustee in trust of that certain body of religious worshipers called and known as the Church of Jesus Christ of Latter-Day Saints, party of

the first part, and William B. Preston, presiding bishop of said church, and his two counsellors, Robert T. Burton and John R. Winder, parties of the second part:

Whereas, by an act of Congress, entitled "An act to amend an act entitled an act to amend section 5363 of the Revised Statutes of the United States in reference to bigamy and polygamy, and for other pur-
149 poses," approv'd March 3rd, 1887, it is among other things provided, "That all religious societies, sects, and congregations shall have the right to have and to hold through trustees appointed by any court exercising probate powers in a territory, only on the nomination of the authorities of such society, sect, or congregation, so much real property for the erection or use of houses of worship and for such parsonages and burial grounds as shall be necessary for the convenience and use of such religious society, sect, or congregation;" and

Whereas, on the 7th day of April, in the year of our Lord eighteen hundred and eighty-four, at a general conference of said church duly assembled at Provo City, in Utah County, Utah Territory, the authorities of said church by unanimous vote were then and there requested to name and nominate as the trustees to hold certain real property located in Salt Lake City, Utah Territory, belonging to said body of religious worshippers, William B. Preston, presiding bishop of said church, and his two counsellors, Robert T. Burton and John R. Winder.

That pursuant to such request and in harmony with said law, on the 19th day of May, 1887, John Taylor, president of said church, and his two counsellors, George Q. Cannon and Joseph F. Smith, who constitute what is known and called the first presidency of said Church of Jesus Christ of Latter-Day Saints, and who are the duly constituted authorities thereof, in a document duly executed and filed in t'e probate court of Salt Lake County, Utah Territory, May 19th, 1887, nominated and named as the trustees to hold the real property be'onging to said church
150 in said county, the said parties hereto of the second part.

That pursuant to such nomination and the filing of said paper the probate court in and for said county, on being informed in the premises and having been made fully acquainted with the facts, and especially with the one named, that said John Taylor, George Q. Cannon, and Joseph F. Smith constitute the first presidency of said church and are its duly acknowledged authorities, on the 19th day of May, 1887, in open court, duly entered its decree and order appoin'ing the said William B. Preston, presiding bishop of said church, and his two counsellors, Robert T. Burton and John R. Winder, trustees, to hold the property as trustees that might be transferred to them, pursuant to the law aforesaid; and

The said appointees have received such appointment and are now ready to receive such trust as may be imposed upon them by virtue of said nomination and order of appointment; and

Whereas the said party of the first part has been for many years the trustee in trust of said body of religious worshippers, and has been so designated and known, and as such has up to this time held certain property of said religious worshippers in trust for them, a part of which said property is hereinafter described; and that said body of religious worshippers are for the most part inhabitants of Utah Territory; and that

said property is hereby conveyed to the said parties of the second part in trust for said beneficiaries, and on the trusts and limitations and with the reservations and powers hereinafter named;

Now, therefore, this indenture witnesseth:

151 That the party of the first part, in consideration of the premises and of the sum of one dollar to him in hand paid by the said parties of the second part, the receipt whereof is hereby acknowledged, has granted, bargained, and sold, and by these presents does grant, bargain, sell, and convey unto the said parties of the second part, as joint tenants and not as tenants in common and to their successors duly appointed upon trust and to their assigns forever, the property above referred to and which is particularly described as follows, to wit: All of block eighty-seven (87), in Plat A, Salt Lake City survey, in Salt Lake County, Utah Territory.

Together with and including all and singular the tenements, hereditaments and appurtenances thereunto belonging or in any wise appertaining, with all and singular the reversion and reversions, rents, issues, and profits thereof.

To have and to hold the above granted and described premises and property unto the said parties of the second part, as joint tenants as aforesaid, and to the survivors or survivor of them and to their successors duly appointed and to their assigns forever, for the use, benefit, and behoof of that certain body of religious worshippers known and called the Church of Jesus Christ of Latter-Day Saints, and to and for such use as such church or its duly constituted authorities shall name, dictate, and appoint.

In case it shall or may at any time happen that there shall be a vacancy in the office of said trusteeship, either by reason of death of one of the said parties of the second part or any other cause, it shall then and

152 there be lawful for the authorities of said church to name, nominate, and appoint some person or persons to fill such vacancy as may or shall from time to time be necessary; and in case all of said parties of the second part or their successors shall at any time be deceased or incompetent for any cause to act or discharge said trust, the title to said property shall not be deemed to be in abeyance, but shall in such an event vest in the president of the Church of Jesus Christ of Latter-Day Saints, if there be one at that time, if not, in such person as shall be at that time deemed and acknowledged to be the head of said church by the members thereof: but upon the nomination and appointment of new trustees to fill the vacancy in such trusteeship the president or leader in whom the title has vested shall, unless otherwise directed by the said Church of Jesus Christ of Latter-Day Saints or the duly constituted authorities thereof, convey said premises and property to such newly appointed trustee or trustees, who shall hold the same on the trusts and confidence hereby created and imposed.

The said parties of the second part hereby accept the trust hereby and herein set forth and agree to discharge the same according to the terms herein set forth.

In witness whereof the said parties have all hereunto set their hands and seals this 30th day of June, 1887.

JOHN TAYLOR. [SEAL.]

Signed, sealed, and delivered in the presence of—

SAMUEL BATEMAN.

JAMES E. MALIN.

153 UNITED STATES OF AMERICA,
Territory of Utah, County of Davis, ss:

On this thirtieth day of June, A. D. one thousand eight hundred and eighty-seven, personally appeared before me, Joseph Barton, a notary public in and for said county, duly appointed, commissioned, and qualified, John Taylor, whose name is subscribed to the annexed instrument as first party thereto, personally known to me to be the same person described in, and who executed the said annexed instrument as the party of the first part, and duly acknowledged to me that he executed the same freely and voluntarily, and for the uses and purposes therein mentioned.

In witness whereof I have hereunto set my hand and affixed my official seal, at my office in Kaysville City, Davis County, U. T., the day and year in this certificate first above written.

[NOTARIAL SEAL.] JOSEPH BARTON,
Notary Public.

154 The said Temple Block was taken possession of by the agents of the said Church of Jesus Christ of Latter-Day Saints then existing as a voluntary unincorporated religious sect when Salt Lake City was first laid out and surveyed in 1848, and since that date has been in the possession of said church as a voluntary religious sect until it became incorporated as aforesaid, and t. en as a corporation; that at the time the same was taken possession of as aforesaid it was a part of the public domain, and continued to be such until said land was entered by the mayor of said city along with other lands on the 21st day of November, 1871, under the townsite act of Congress, entitled "An act for the relief of cities and towns upon the public lands," approved March 2nd, 1867.

That on the 1st day of June, 1872, the same was conveyed by the mayor of said Salt Lake City to the trustee in trust of said corporation, in whom the title remained until the act of Congress of February 19th, 1887, took effect.

The facts in regard to the possession and acquisition of the balance of said real estate, above described, are as follows: The second property, above described and known as the Gardo House and grounds, was owned by Brigham Young individually at the time of his death in 1877, and was thereafter transferred and conveyed by his executors to John Taylor as trustee in trust for the corporation of the Church of Jesus Christ of Latter-Day Saints for a valuable consideration, in pursuant to the powers in them vested by the will of the said Brigham Young. That subsequently, on the 24th day of April, 1878, the said John Taylor, as
155 said trustee in trust, transferred and conveyed the same to Theodore McKean on a secret trust for said corporation, who held the same upon said trust until the 2nd day of July, 1887, when he attempted to convey the same to William B. Preston and Robert T. Burton and John R. Winder, truste's, by a certain instrument in writing, of which the following is a copy:

This indenture, made on this second day of July, in the year of our Lord one thousand eight hundred and eighty-seven, by and between Theodore McKean and his wife, Mary P. McKean, parties of the first part, and

William B. Preston, pres'ding bishop of the Church of Jesus Christ of Latter-Day Saints, and his two counsellors, Robert T. Burton and John R. Winder, parties of the second part:

Whereas, by an act of Congress, entitled "An act to amend an act to amend section 5352 of the Revised Statutes of the United States in reference to bigamy and polygamy, and for other *other* purposes," approved March 3rd, 1887, it is among other things provided, "That all religious societies, sects, and congregations shall have the right to have and to hold, through trustees appointed by any court exercising probate powers in a Territory, only on the nomination of the authorities of such society, sect, or congregation, so much real property for the erection or use of houses of worship and for such parsonages and burial grounds as shall be necessary for the convenience and use of such religious society, sect, or congregation;" and

Whereas, on the 7th day of April, in the year of our Lord
156 eighteen hundred and eighty-four, at a general conference of said church, duly assembled at Provo City, in Utah County, Utah Territory, the authorities of said church, by unanimous vote, were then and there requested to name and nominate as the trustees to hold certain real property located in Salt Lake City, Utah Territory, belonging to said body of religious worshippers, William B. Preston presiding bishop of said church, and his two counsellors, Robert T. Burton and John R. Winder;

That pursuant to such request and in harmony with said law, on the 19th day of May, 1887, John Taylor, president of said church, and his two counsellors, George Q. Cannon and Joseph F. Smith, who constitute what is known and called the first presidency of said Church of Jesus Christ of Latter-Day Saints, and who are duly constituted authorities thereof, in a document duly executed and filed in the probate court of Salt Lake County, Utah Territory, May 19th, 1887, nominated and named as trustees to hold the real property belonging to said church in said county the said parties hereto of the second part;

That pursuant to such nomination and the filing of said paper, the probate court in and for said county, on being informed in the premises and having been made fully acquainted with the facts, and especially with the one named, that said John Taylor, George Q. Cannon, and Joseph F. Smith constitute the first presidency of said church and are its acknowledged authorities, on the 19th day of May, 1887, in open court, duly
157 entered its decree and order appointing the said William B. Preston, presiding bishop of said church, and his two counsellors, Robert T. Burton and John R. Winder, trustees to hold the property as trustees that might be transferred to them pursuant to the law aforesaid; and

The said appointees have received such appointment and are now ready to receive such trusts as may be imposed upon them by virtue of said nomination and order of appointment.

Now, therefore, this indenture witnesseth:

That the party of the first part, in consideration of the premises and of the sum of one dollar to them in hand paid by the said parties of the second part, the receipt whereof is hereby acknowledged, have granted, bargained, and sold, and these presents do grant, bargain, sell, and convey unto the said parties of the second part, as joint tenants and not as tenants

in common, and to their successors duly appointed upon trust, and to their assigns forever, the property particularly described as follows, to wit:

All of the east half of lot six (6) in block seventy-five (75) Plat A, Salt Lake City survey, and bounded as follows: Commencing at the northeast corner of said lot, thence south ten (10) rods; thence west ten (10) rods; thence north ten (10) rods, thence east ten (10) rods to the place of beginning.

Together with and including all and singular the tenements, hereditaments, and appurtenances thereto belonging or in anywise appertaining, with all and singular the reversion and reversions, rents, issues, and profits thereof.

158 To have and to hold the above granted and described premises and property unto the said parties of the second part, as joint tenants as aforesaid, and to the survivors or survivor of them, and to their successors duly appointed, and to their assigns forever, for the use, benefit, and behoof of the president or leader of that certain body of religious worshippers known and called the Church of Jesus Christ of Latter-Day Saints for a residence or parsonage, and to and for such use as the president or leader of said church, by whatever name designated, shall name, dictate, and appoint.

In case it shall or may at any time happen that there shall be a vacancy in the office of said trusteeship, either by reason of the death of one of the said parties of the second part or any other cause, it shall then and there be lawful for the authorities of said church to name, nominate, and appoint some person or persons to fill such vacancy as may or shall from time to time be necessary; and in case all of said parties of the second part or their successors shall at any time be deceased or incompetent for any cause to act or discharge said trust, the title to said property shall not be deemed to be in abeyance, but shall in such an event vest in the president of the Church of Jesus Christ of Latter-Day Saints, if there is one at that time, if not in such person as shall be at that time deemed and acknowledged to be the head of said church by the members thereof; but upon the nomination and appointment of new trustees to fill the vacancy in such

159 trusteeship the said president or leader in whom the title is vested shall, unless otherwise directed by the said Church of Jesus Christ of Latter-Day Saints or the duly constituted authorities thereof, convey said premises and property to such newly appointed trustee or trustees, who shall hold the same on the trusts and confidence hereby created and imposed.

The said parties of the second part hereby accept the trust hereby and herein set forth, and agree to discharge the same according to the terms herein set forth.

In witness whereof the said parties have all hereunto set their hands and seals this second day of July, 1887.

Signed, sealed, and delivered in the presence of Frederick Kesler:

THEO. MCKEAN, [SEAL.]
MARY P. MCKEAN. [SEAL.]

UNITED STATES OF AMERICA,
Territory of Utah, County of Salt Lake, ss:

On this second day of July, . D. one thousand eight hundred and eighty-seven, before me, James Jack, a notary public in and for Salt Lake

County in the Territory of Utah, duly appointed, commissioned
160 and qualified, personally appeared Theodore McKean and Mary P. McKean, his wife, whose names are subscribed to the annexed instrument as parties thereto, personally known to me to be the same persons described in and who executed the said annexed instrument as parties thereto, who, each of them, acknowledged to me that they, each of them, respectively executed the same freely and voluntarily and for the uses and purposes therein mentioned; and the said Mary P. McKean, wife of the aforesaid Theodore McKean, on being examined by me separate and apart from and without the hearing of her said husband, and after being by me made acquainted with said conveyance and her rights of, in, and to said property, and particularly her right of dower therein, she then acknowledged to me that she executed the same understandingly and relinquished her dower in the real estate therein conveyed freely and voluntarily and without compulsion or undue influence on the part of her husband for the consideration named in said deed and for the uses and purposes therein named, and that she does not wish to retract the execution thereof.

In witness whereof I have hereunto set my hand and affixed my notarial seal at my office in Salt Lake City, U. T., the day and year in this certificate first above written.

[NOTARIAL SEAL.] JAMES JACK,
Notary Public for Salt Lake County, U. T.

161 That said Gardo House and grounds were used and occupied by said John Taylor, president of said church, from 1878 up to the time of his death as a residence.

The third prope'ty above described, known as the Historian's Office and grounds, was taken possession of by Albert P. Rockwood in 1848, and was a part of the public domain, and continued to be such up to the 21st day of November, 1871, when the town site of Salt Lake City was entered as aforesaid; that on the 3rd day of October, 1855, the Church of Jesus Christ of Latter-Day Saints, through its trustee in trust, Brigham Young, purchased the said Rockwoods claim to said premises and at its own cost and expense, erected thereon the building which has ever since been known as the Historian's Office and residence; that said building was large enough to accommodate the historian's family and furnish an office for the church historian; that from the year 1848 until the time of his death in 1875 George A. Smith was the historian of said church, and lived in said building with his family, and had the custody of the books, papers, and records of said church relating to its history or public acts of its officers and members; that the same have always been kept in said building from the time of its construction until the present time at the cost of said church, and that such office is and has been necessary for the use of said historian in the discharge of his duties.

That in 1872 the said George A. Smith obtained the title to said premises from the mayor of Salt Lake City under the town-site
162 act, and that after his death the same was conveyed to his wife and one of his granddaughters, who afterwards transfer'ed and conveyed the same to Theodore McKean for a valuable consideration; that the said Theodore McKean has ever since that date held and now holds

the same on a secret trust for the use and benefit of said corporation; that said grounds are immediately west of and adjoining the Gardo House grounds.

The fourth property above described, known as part of the Tithing Office and grounds, was taken possession of by the agents of the Church of Jesus Christ of Latter-Day Saints when Salt Lake City was first laid out and surveyed in 1848, and ever since that time has been used and occupied by said church as a voluntary sect until it became incorporated as aforesaid, and then as a corporation in receiving and disbursing tithing and voluntary contributions of property, and that prior to July 1st, 1862, buildings and other improvements of considerable value had been built thereon by said church; that at the time said property was taken possession of as aforesaid it was a part of the public domain and continued to be such until the 21st day of November, 1871, when said land was entered as aforesaid along with other lands under said town-site act by the mayor of Salt Lake City; that Brigham Young, who was then president and trustee in trust of said corporation, claimed said land under said town-site law, and it was conveyed to him by Daniel H. Wells, mayor of Salt Lake City; that in November, 1873, Brigham Young transferred and
163 conveyed said property to George A. Smith, as the trustee in trust of the corporation of the Church of Jesus' Christ of Latter-Day Saints and his successor in office; that on the death of said George A. Smith the legal title in said premises vested in Brigham Young as such successor, and the executors of said Brigham Young transferred and conveyed said property to John Taylor as the trustee in trust of said corporation, who in April, 1878, transferred and conveyed the same to Edward Hunter upon a secret trust for the use and benefit of said corporation; that said Edward Hunter afterwards, to-wit, on the 24th day of April, 1878, transferred and conveyed the same to Robert T. Burton on a secret trust for said corporation, and on the 2nd day of July, 1887, the said Robert T. Burton attempted to convey the same to William B. Preston, John R. Winder, and himself as trustees by a certain instrument in writing in the words and figures following, to wit:

This indenture, made on this second day of July, in the year of our Lord one thousand eight hundred and eighty-seven, by and between Robert T. Burton and his wife, Maria S. Burton, the parties of the first part, and William B. Preston, presiding bishop of the Church of Jesus Christ of Latter-Day Saints, and his two counsellors, Robert T. Burton and John R. Winder, parties of the second part:

Whereas, by an act of Congress entitled "An act to amend an act entitled 'An act to amend section 5352 of the Revised Statutes of the
164 United States in reference to bigamy and polygamy and for other purposes,'" approved March 3rd, 1887, it is, among other things, provided, "That all religious societies, sects, and congregations shall have the right to have and to hold, through trustees appointed by any court exercising probate powers in a Territory, only on the nomination of the authorities of such society, sect, or congregation, so much real property for the erection or use of houses of worship and for such parsonages and burial grounds as shall be necessary for the convenience and use of such religious society, sect, or congregation;" and

Whereas, on the 7th day of April, in the year of our Lord eighteen hundred and eighty-four, at a general conference of said church duly

assembled at Provo City, in Utah County, Utah Territory, the authorities of said church, by unanimous vote, were then and there requested to name and nominate as the trustees to hold certain real property located in Salt Lake City, Utah Territory, belonging to said body of religious worshippers, William B. Preston, presiding bishop of said church, and his two counsellors, Robert T. Burton and John R. Winder;

That pursuant to such request and in harmony with said law, on the 19th day of May, 1887, John Taylor, president of said church, and his two counsellors, George Q. Cannon and Joseph F. Smith, who constitute what is known and called the first presidency of said Church of Jesus Christ of Latter-Day Saints, and who are the duly constituted authorities thereof, in a document duly executed and filed in the probate court of Salt Lake County, Utah Territory, May 19th, 1887, nominated and
165 named as the trustees to hold the real property belonging to said church in said county, the said parties hereto of the second part;

That, pursuant to such nomination and the filing of said paper, the probate court in and for said county on being informed in the premises, and having been made fully acquainted with the facts, and especially with the one named, that said John Taylor, George Q. Cannon, and Joseph F. Smith constitute the first presidency of said church and are its duly acknowledged authorities, on the 19th day of May, 1887, in open court, duly entered its decree and order appointing the said William B. Preston, presiding bishop of said church, and his two counsellors, Robert T. Burton and John R. Winder, trustees to hold the property, as trustees, that might be transferred to them, pursuant to the law aforesaid; and

The said appointees have received such appointment and are now ready to receive such trusts as may be imposed upon them by virtue of said nomination and order of appointment; and

Whereas, the said Robert T. Burton, one of the parties of the first part, has been for many years a trustee holding certain real property for said religious worshipers in trust for them, which said property is hereafter described:

Now therefore, this indenture witnesseth:

That the parties of the first part, in consideration of the premises and of the sum of one dollar to them in hand paid by the said parties of the second part, the receipt whereof is hereby acknowledged, have
166 granted, bargained and sold, and by these presents do grant, bargain, sell and convey unto the said parties of the second part, as joint tenants and not as tenants in common, and to their successors duly appointed upon trust and to their assigns forever, the property above referred to and which is particularly described as follows, to-wit: Commencing four (4) rods north of the southwest corner of lot four (4), block eighty-eight (88), Plat A, Salt Lake City survey; thence north twenty-six (26) rods; thence east twenty (20) rods; thence south twenty-two and one half ($22\frac{1}{2}$) rods; thence west fourteen (14) rods; thence south three and one half ($3\frac{1}{2}$) rods; thence west six (6) rods, to the place of beginning, containing two and $\frac{157}{160}$ acres.

Together with and including all and singular the tenements, hereditaments, and appurtenances, thereunto belonging or in anywise appurtaining, with all and singular the reversion and reversions, rents, issues, and profits thereof.

To have and to hold the above granted and described premises and property unto the said parties of the second part, as joint tenants as aforesaid and to the survivors or survivor of them, and to their successors duly appointed and to their assigns forever. for the use, benefit, and behoof of that certain body of religious worshippers known and called the Church of Jesus Christ of Latter-Day Saints, and to and for such use as such church or its duly constituted authorities shall name, dictate, and appoint.

167 In case it shall or may at any time happen that there shall be a vacancy in the office of said trusteeship, either by reason of the death of one of the said parties of the second part or any other cause, it shall then and there be lawful for the authorities of said church to name, nominate, and appoint some person or persons to fill such vacancy as may or shall from time to time be necessary; and in case all of said parties of the second part, or their successors, shall at any time be deceased or incompetent for any cause to act or discharge said trust, the title to said property shall not be deemed to be in abeyance, but shall in such an event vest in the president of said Church of Jesus Christ of Latter-Day Saints, if there is one at that time; if not, in such person as shall be at that time deemed and acknowledged to be the head of said church by the members thereof; but on the nomination and appointment of new trustees to fill the vacancy in such trusteeship the said president or leader in whom the title has vested shall, unless otherwise directed by the said Church of Jesus Christ of Latter-Day Saints or the duly constituted authorities thereof, convey said premises and property to such newly appointed trustee or trustees, who shall hold the same on the trusts and confidence hereby created and imposed.

The said parties of the second part hereby accept the trust hereby and herein set forth and agree to discharge the same according to the terms herein set forth.

168 In witness whereof the said parties have all hereunto set their hands and seals this second day of July, 1887.

ROBERT T. BURTON. [SEAL.]
MARIA S. BURTON. [SEAL.]

Signed, sealed, and delivered in the presence of—
JOHN KIRKMAN.
WALTER MUSSER.

UNITED STATES OF AMERICA,
Territory of Utah, County of Salt Lake, ss:

On this second day of July, A. D. one thousand eight hundred and eighty-seven, before me, James Jack, a notary public in and for Salt Lake County, in the Territory of Utah, duly appointed, commissioned and qualified, personally appeared Robert T. Burton and Maria S. Burton, his wife, whose names are subscribed to the annexed instrument as parties thereto, personally known to me to be the same persons described in and who executed the said annexed instrument, as parties thereto, who each of them acknowledged to me that they each of them, respectively, executed the same freely and voluntarily and for the uses and purposes therein mentioned; and the said Maria S. Burton, wife of the aforesaid Robert T. Burton, on being examined by me separate and apart from and without the hearing of

her said husband, and after being by me made acquainted with said conveyance and her rights of, in, and to said property, and particularly her right of dower therein, she then acknowledged to me that she executed the same understandingly, and relinquished her dower in the real estate
169 herein conveyed freely and voluntarily, and without compulsion or undue influence on the part of her said husband, for the considerations named in said deed and for the uses and purposes therein named, and that she does not wish to retract the execution thereof.

In witness whereof I have hereunto set my hand and affixed my notarial seal at my office in Salt Lake City, U. T., the day and year in this certificate first above written.

JAMES JACK,
Notary Public for Salt Lake County, U. T.

The fifth piece of property above described known as part of the Tithing Office and grounds was possessed, acquired, and owned, as follows:

In the year 1848, Newell K. Whitney, then presiding bishop of said Church of Jesus Christ of Latter-Day Saints, took possession of lot five, block eighty-eight, Plat A, Salt Lake City survey, and in the same year Horace K. Whitney took possession of lot six in said block; that some time in the year 1856 the Church of Jesus Christ of Latter-Day Saints, by its agents, took possession of the south half of said lots, and placed thereon yards and corrals, and have continued to occupy the same with said yards and corrals down to this period. That in the year 1870,
170 the mayor of Salt Lake City entered the townsite of Salt Lake City, in trust for the inhabitants and occupants thereof, under the law of 1867. That the foregoing lots are a portion of said entry.

The said Church of Jesus Christ of Latter-Day Saints, by its trustee, Brigham Young, filed an application in the proper court for a title to the south half of said lots, and the heirs of Newell K. Whitney also filed an application in the proper court for the south half of said lot five, and Horace K. Whitney filed an application in the same court for the south half of lot six.

The court awarded the title to the said premises to Brigham Young, as trustee aforesaid.

That afterwards, in the year 1872, Brigham Young, trustee, obtained a deed from the heirs of Newell K. Whitney to said south half of lot five, and in consideration thereof paid them seven thousand dollars, and at the same time the said Brigham Young, trustee, obtained a deed from Horace K. Whitney of lot six and paid him therefor the sum of $2,000.

At the time the act of Congress of February 19th, 1887, took effect the legal title thereto was held by Robert T. Burton on a secret trust for the use and benefit of said corporation; that on the 2nd day of July, 1887, the said Robert T. Burton attempted to convey the same to William B. Preston, John R. Winder, and himself, as trustees, by that certain instrument of writing hereinbefore last set out.

171 The remainder of said real estate, held, owned, and possessed by said corporation as aforesaid, was acquired by it after the 1st day of July, 1862, by purchase, but the legal title thereof was at all times held by persons in trust for said corporation upon secret trusts, and not by the corporation itself.

That at the time the said act of Congress of February 19th, 1887, took effect said corporation owned, held, and possessed the following described personal property, to wit:

One large safe.

One medium-sized iron safe.

25 armchairs.

11 rotary chairs.

10 upholstered chairs.

Two desks.

One letterpress.

800 shares of $100 each of the capital stock of the Salt Lake Gas Company.

4,732 shares of a $100 each of the capital stock of the Deseret Telegraph Company.

One promissory note, dated March 2nd, 1887, due and payable to John Taylor, trustee in trust, or order, two years after date, calling for the sum of $13,333.32, bearing six per cent interest from date, signed by Sharp and Little.

One promissory note, dated March 2nd, 1887, due and payable to John Taylor, trustee in trust, or order, two years after date, and calling for $1,666.66, with 6 % interest from date, signed Le Grand Young.

172 One promissory note, dated March 2nd, 1887, payable to the order of John Taylor, trustee in trust, in two years from date, calling for $4,833.33, with 6 % interest from date, signed by James Jack.

One promissory note, dated March 2nd, 1887, payable to John Taylor, trustee in trust, or order, in two years from date, calling for $5,000, with 6 % per cent interest from date, and signed by H. B. Clawson.

Thirty thousand one hundred and fifty-eight (30,158) sheep.

$237,666.15, money proceeds of sales of miscellaneous property.

That since said personal property came into the possession of the receiver heretofore appointed in this cause he has collected as rent from the said real estate $2,850; as dividends on said gas stock, $4,900; as interest on said money, $2,233.60.

That the said corporation of the Church of Jesus Christ of Latter-Day Saints was, in its nature and by its statute of incorporation, a religious and charitable corporation for the purpose of promulgating, spreading, and upholding the principles, practices, teachings, and tenets of said church, and for the purpose of dispensing charity, subject and according to said principles, practices, teachings, and tenets, and that from the time of the organization of said corporation up to the time of the passage of said act of February the 19th, 1887, it never had any other corporate objects, purposes, and authority; never had any capital stock or stockholders, nor have there ever been any natural persons who were authorized, under its act and charter of incorporation, to take or hold any personal prop-

173 erty or estate of said corporation except the trustees provided for by said statute of incorporation.

That the said personal property hereinbefore set out had been accumulated by said late corporation, prior to the passage of said act of February the 19th, 1887, and that such accumulation extended over a period of twenty years or more. That prior to and at that time of the passage of said act the said personal property had been used for and devoted to the

promulgation, spread, and maintenance of the doctrines, teachings, tenets, and practices of the said Church of Jesus Christ of Latter-Day Saints, and the doctrine of polygamy, or plurality of wives, was one of the said doctrines, teachings, tenets, and practices of the said late church corporation; but only a portion of the members of said corporation, not exceeding twenty per cent of the marriageable members, male and female, were engaged in the actual practice of polygamy. That since the passage of said act of Congress of February 19th, 1887, the said voluntary religious sect known as the Church of Jesus Christ of Latter-Day Saints has comprised the great body of individuals who formerly composed the membership of said corporation, and the organization, general government, doctrines, and tenets of said voluntary religious sect have been and now are substantially the same as those of the late corporation of the Church of Jesus Christ of Latter-Day Saints.

That certain of the officers of said religious sect regularly ordained, and certain public preachers and teachers of said religious sect, who are in good standing, and who are preachers and teachers, concerning the doc-
174 trines and tenets of said sect have, since the passage of said act of Congress of February the 19th, 1887, promulgated, taught, spread, and upheld the same doctrines, tenets, and practices, including the doctrine of polygamy, as were formerly promulgated, taught, and upheld by the said late corporation; and the said teachings of the said officers, preachers, and teachers have not been repudiated or dissented from by said voluntary religious sect, nor have their teachings and preachings, or their actions, created any division or schism in said voluntary religious sect.

That any dedication or setting aside of any of the personal property hereinbefore set out as having belonged to the late corporation, to the uses and purposes of, or in trust for, the members of the late corporation of the Church of Jesus Christ of Latter-Day Saints, or any of them, would practically and in effect be a dedication and setting aside of said personal property to the uses and for the purposes of, and in trust for, the unincorporated religious sect known as the Church of Jesus Christ of Latter-Day Saints.

That at the commencement of this suit all of said personal property was in the possession of the said William B. Preston, who held it in trust and for the benefit of said corporation.

That all of the above described property, real and personal, is now in the possession of Frank H. Dyer, receiver of this court.

175 That of the above described real estate the following tract, including the buildings thereon, situated in said county of Salt Lake, Territory of Utah, and being all of block eighty-seven (87) in Plat A, Salt Lake City survey, at the time of the passage of the act of Congress of February 19th, 1887, was used exclusively for the worship of God according to the doctrines and tenets of the Church of Jesus Christ of Latter-Day Saints.

That several proceedings have been instituted by and with the consent and advice of this court by information on behalf of the United States of America, in the third district court of said Territory of Utah, for the purpose of having declared and adjudged forfeited and escheated to the Government of the United States all of the above described real estate, excepting the said block eighty-seven of Plat A, Salt Lake City survey,

last above-mentioned, by virtue of the said act of Congress entitled "An act to amend section 5352 of the Revised Statutes of the United States in reference to bigamy and for other purposes," which proceedings are now pending in said court and undetermined.

It is therefore adjudged and decreed by the court upon the facts ascertained and declared as aforesaid, as follows, to wit:

That on the 3rd day of March, 1887, the corporation of the Church of Jesus Christ of Latter-Day Saints became, and the same was, dissolved; and that since said date it has had no legal corporate existence.

2nd. It is furthermore adjudged and decreed that the following
176 alleged deeds hereinbefore set out, were executed without authority, and that no estate in the property set out in said deeds passed by the same or any of them, to wit:

The deed dated June 30th, 1887, from John Taylor, trustee in trust, to William B. Preston, Robert T. Burton, and John R. Winder, as trustees, for the property described as the Temple Block. The deed dated July 2nd, 1887, from Theodore McKean and wife to William B. Preston, Robert T. Burton, and John R. Winder, as trustees, for property known as the Gardo House and grounds. The deed dated July 2nd, 1887, from Robert T. Burton and wife to William B. Preston, Robert T. Burton, and John R. Winder, as trustees, for the property described as the Tithing House and grounds. And it is therefore ordered and decreed that said alleged deeds and each of them be, and the same are hereby, annulled, cancelled, and set aside.

3rd. It is further adjudged and decreed that the following described real estate, to wit: All of block eighty-seven in Plat A, Salt Lake City survey, in the city and county of Salt Lake, Territory of Utah, be, and the same is hereby, set apart to the voluntary religious worshippers and unincorporated sect and body known as the Church of Jesus Christ of Latter-day Saints, and that the said William B. Preston, Robert T. Burton, and John R. Winder, trustees appointed by the probate court of Salt Lake County, as hereinbefore set out, do hold, manage, and control said property so set aside for the benefit of said voluntary religious
177 worshippers and unincorporated sect and body, and for the erection and use by them of houses of worship, and for their use and convenience in the lawful exercise of worship, according to the tenets of said sect and body. And it is ordered that Frank H. Dyer, receiver of this court heretofore appointed, do surrender and deliver possession and control of all of the property so set aside to the trustees William B. Preston, Robert T. Burton, and John R. Winder, aforesaid.

4th. It is furthermore adjudged and decreed that, except as to the Temple Block aforesaid, the petitions of William B. Preston, Robert T. Burton, and John R. Winder, trustees, filed the 6th day of October, 1888, in this court, for the setting aside of certain real estate for the uses and purposes of the religious sect known as the Church of Jesus Christ of Latter-Day Saints be, and the same are hereby, denied. And it is adjudged and decreed that the balance of the real estate, over and above said Temple Block, which has been hereinbefore found as belonging to said late corporation, has not, nor has any of it, ever been used as buildings or grounds appurtenant thereunto, for the purposes of the worship of God, or of parsonages connected therewith, or for burial grounds, by the said late corpo-

ration of the Church of Jesus Christ of Latter-Day Saints; nor is the said real estate, except as set aside, or any part thereof, necessary for such purposes for the unincorporated religious sect known as the Church of Jesus Christ of Latter-Day Saints.

178 5th. It is furthermore adjudged and decreed that all of the real estate set out in the findings of fact hereinbefore was the property of and belonged to the late corporation of the Church of Jesus Christ of Latter-Day Saints, and the same was held in trust for said corporation. And furthermore, that the legal titles of and estates in said real estate, and every part and parcel thereof were acquired by said late corporation and its trustees subsequently to July 1st, 1862, and that prior to said date neither said corporation nor its trustees had any legal title or estate in and to said real estate or any part thereof.

6th. And it is further adjudged and decreed that the petition of intervention by George Romney, Henry Dinwoodey, James Watson and John Clark, on behalf of themselves and other members of the late corporation of the Church of Jesus Christ of Latter-Day Saints, filed this day in this court, which said petition alleges the claim on behalf of the petitioners and those for whom it is filed, in and to the real and personal property formerly belonging to said late corporation, and now in the hands of the receiver of this court be, and the same is hereby, denied. And it is adjudged and decreed that neither said intervenors nor those in whose behalf they have filed said petition, have any legal claim or title in and to said property or any part thereof.

7th. And the court does further adjudge and decree that the late corporation of the Church of Jesus Christ of Latter-Day Saints, having become by law dissolved as aforesaid, there did not exist at its dissolution and do not now exist any trusts or purposes within the objects and purposes for which

179 said personal property was originally acquired as hereinafter set out, whether said acquisition was by purchase or donation, to or for which said personalty or any part thereof could be used or to which it could be dedicated, that were and are not in whole or in part, opposed to public policy, good morals, and contrary to the laws of the United States. And furthermore, that there do not exist any natural persons, or any body, association, or corporation who are legally entitled to any portion of said personalty as successors in interest to said Church of Jesus Christ of Latter-Day Saints, nor have there been nor are there now any trusts of a definite and legal character upon which this court, sitting as a court of chancery, can administer the personal property hereinbefore set out. And it is furthermore adjudged that all and entire the personal property set out in this decree as having belonged to said late corporation of the Church of Jesus Christ of Latter-Day Saints has, by reason of the dissolution of said corporation as aforesaid, on account of the failure or illegality of the the trusts to which it was dedicated at its acquisition, and for which it had been used by said late corporation and by operation of law, became escheated to and the property of the United States of America, subject to the costs and expenses of this proceeding, and of the receivership by this court instituted and ordered.

8th. It is furthermore ordered and adjudged that there is not now, and has not been since the 3rd day of March, 1887, any per-

180 son legally authorized to take charge of, manage, preserve, and control the personal and real property hereinbefore set out, except

the receiver heretofore appointed by this court; and it is therefore ordered that the receivership hereinbefore established by this court is continued in full force and effect, and that the said receiver shall continue to exercise all and entire the powers and authority conferred upon him by the decree appointing him. And it is further ordered that he do continue in his possession and keeping all of the property, real and personal, hereinbefore set out, except such realty as has been set apart by the provisions of this decree for the benefit of the unincorporated religious sect known as the Church of Jesus Christ of Latter-Day Saints, and that he do safely keep, manage, and control the same in accordance with the provisions of the order of this court appointing him receiver, pending the determination of the proceeding upon information hereinbefore referred to, and until the further order of this court; and final action upon and determination concerning the accounts, proceedings and transactions of said receiver, and all matters connected with or incidental thereto are ordered to be reserved for the future consideration an' decision of this court.

ELLIOT SANDFORD,
Chief Justice Supreme Court Territory of Utah.

(Endorsed:) Title, court, and cause. Decree. Filed Oct. 8, 1888. E. T. Sprague, clerk.

181 In the supreme court of Utah Territory—Regular June term, 1891.

THE UNITED STATES OF AMERICA,
vs.
THE LATE CORPORATION OF THE CHURCH OF Jesus Christ of Latter-Day Saints *et al.*, defendants.

WEDNESDAY, *July 1st*, 1891.

On reading and filing the mandate of the United States Supreme Court whereby it appears that the judgment and decree of this court heretofore entered herein, on the 8th day 'f October, A. D. 1888, is affirmed with a modification of the seventh clause of said decree; now, therefore, on motion of Charles S. Varian, esq., United States attorney for Utah, it is hereby ordered and adjudged in obedience to said mandate that the seventh clause of said decree be modified so as to read as follows:

"7th. And the court does further adjudge and decree that the late corporation of the Church of Jesus Christ of Latter-Day Saints, having become by law dissolved, as aforesaid, there did not exist at its dissolution, an' do not now exist any trusts or purposes within the objects and purposes for which said personal property was originally acquired, as hereinbefore set out, whether said acquisition was by purchase or donation to or for which said personalty, or any part thereof, could be used, or to
182 which it could be dedicated, that were and are not, in whole or in part, opposed to public policy, good morals, and contrary to the laws of the United States. And furthermore than there do not exist any natural persons, or any body, association, or corporation who are legally entitled to any portion of said personalty or successor's interest to said

Church of Jesus Christ of Latter-Day Saints, and the said personal property has devolved to the United States, and not being lawfully applicable to the purposes for which it was originally dedicated or acquired, and to which at the commencement of this suit it was being devoted by the said corporation and its controlling authorities, the same ought to be limited and appointed to such charitable uses, lawful in their character, as may most nearly correspond to those to which it was originally destined, to be ascertained and defined (unless in the meantime Congress should otherwise order) by reference to a master for due examination, inquiry, and report thereon, subject to the approval of the court, and to be established, administered, and carried out in such manner and according to such scheme as may be suggested and reported by said master and approved by the court.

It is further ordered and decreed that until the ascertainment and determination of such uses and the adoption of such scheme, and until direction be taken for the ultimate funding or investment of the said personal property for the purpose aforesaid, the receiver appointed in this cause, do continue in the custody and charge thereof with all
183 accumulations subject to the further order of the court, and (conjointly with the rents and income of the real estate) to the payment of the costs and expenses of this proceeding and of the receivership aforesaid. The reference herein provided for to be made by separate order."

Whereupon, Charles S. Varian, esq., attorney for the United States for the district of Utah, moves the court that a master in chancery be now appointed in accordance with said mandate, and the court after asking that counsel for both parties present to the court the names of suitable parties for such appointment, which was done, took the matter under advisement.

184 In the supreme court of Utah.

UNITED STATES OF AMERICA, PLAINTIFF,
vs.
THE LATE CORPORATION OF THE CHURCH OF Jesus Christ of Latter-Day Saints *et al.*, defendants.

WEDNESDAY, *July* 1*st*, 1891.

It is ordered, adjudged, and decreed that this cause be referred to C. F. Loofbourow, esq., hereby appointed a master in chancery for such purpose, for examination and inquiry, and to report a scheme for the ascertainment and determination of such charitable uses, lawful in their character, as may most nearly correspond to those to which it was originally destined, for the personal property referred to and described in the decree of this court in this cause and now in the hands of the receiver of the court, strictly in accordance with said final decree as modified by the direction of the Supreme Court of the United States.

And it is further ordered, adjudged, and decreed that the said master be, and he is hereby, empowered to administer oaths, subpœna and examine witnesses, employ a stenographer, and to incur all other expenses necessary to enable him to properly perform the duties herein imposed; and
184½ that he, at the next regular term of this court, do report and suggest to the court the scheme ascertained and determined by him, with

the evidence which may be taken in pursuance of this decree. Either party to this cause shall be permitted to adduce evidence and offer argument before the said master.

By MAJORITY OF THE COURT.

185 In the supreme court of Utah Territory.

THE UNITED STATES OF AMERICA
vs.
THE LATE CORPORATION OF THE CHURCH OF Jesus Christ of Latter-Day Saints et al.

To the honorable the supreme court:

The undersigned having been duly appointed and commissioned by this honorable court on the 1st day of July, 1891, as its master in chancery, to devise and report a scheme for the application of the personal-property fund mentioned in the final decree of this court entered in this cause on the 8th day of October, 1888, submits the following report:

I proceeded, beginning on the 19th day of October, 1891, to hear not only the parties to the record in this cause, but all others who appeared, to present such schemes as they and each of them choose to present for the application of the said fund.

The several schemes so presented, together with the evidence in full in support of each, accompany this report.

1.

The defendants, Wilford Woodruff, Lorenzo Snow, Franklin D. Richards, Brigham Young, Moses Thatcher, Francis M. Lyman, John Henry Smith, George Teasdale, Heber J. Grant, John W. Taylor,
186 William B. Preston, Robert T. Burton, John R. Winder, Francis Armstrong, Jesse W. Fox, and Theodore McKean, on behalf of themselves and all other members of the voluntary religious associations known as the Church of Jesus Christ of Latter-Day Saints, represented by their attorneys, F. S. Richards, Le Grand Young, and W. H. Dickson, have presented a scheme, which involves the vesting of all of said fund in the first presidency of said church in trust to invest the same and apply the proceeds thereof to the relief of the poor of said church according to the judgment and discretion of said first presidency and to the building and maintenance and repair of places of worship for the members of said church.

It is alleged amongst other things in their said application that ever since the organization of said church the members thereof were accustomed to make, and from time to time did make, voluntary contributions to the fund of said church. That the fund now to be applied by the court was made up of such contributions made by the members of said church exclusively prior to March 3rd, 1887.

That ever since the organization of said church, and down to the time when said fund was taken possession of by the receiver herein, the said fund has been managed, controlled, and disbursed by and under the direction of the first presidency of said church, and was devoted and applied

solely to the religious and charitable uses in which the said church
187 and the members thereof were interested. That much the larger part of said fund had, prior to March 3rd, 1887, been devoted to the building of temples, meetinghouses, and other places of worship for the members of said church, and to the relief of the poor and distressed members of said church, their families, and to the widows and orphans of such members who were in needy and distressed circumstances.

These allegations are in the main supported by the evidence adduced before me.

It is apparent from the foregoing statement that the scheme proposed by these defendants involves the placing of the fund in the identical same hands, and to be devoted to some of the identical same uses, to which it was being applied at and before the dissolution of the corporation and at and before the time when the decree in this cause was entered.

The decree in this case, in its findings of fact, recites among other things "that any dedication or setting aside of any of the personal property hereinbefore set out as having belonged to the late corporation to the uses and purposes of, or in trust for, the members of the late corporation of the Church of Jesus Christ of Latter-Day Saints, or any of them, would practically and in effect be a dedication and setting aside of said personal property to the uses and for the purposes of, and in trust for, the unincorporated religious sect 'nown as the Church of Jesus Christ of Latter-Day Saints."

This decree further proceeds: "And the court does further
188 adjudge and decree that the late corporation of the Church of Jesus Christ of Latter-Day Saints having become by law dissolved as aforesaid, there did not exist at its dissolution, and do not now exist, any trusts or purposes within the objects and purposes for which said personal property was originally acquired, as hereinbefore set out, * * * to or for which said personalty or any part thereof could be used, or to which it could be dedicated, that were and are not, in whole or in part, opposed to public policy, good morals, and contrary to the laws of the United States; * * * and not being lawfully applicable to the purposes for whic' it was originally dedicated or acquired, and to which at the commencement of this suit it was being devoted, by the said corporation and its controlling authorities, the same ought to be limited and appointed to such charitable uses, lawful in their character, as may most nearly correspond to those to which it was originally destined," etc.

My understanding is, that all the uses to which this property was being applied by this church and its controlling authorities at and before the commencement of this suit rest under the condemnation of this decree. It is adjudicated that the property can not go back to any of those uses.

The direction of the Supreme Court of the United States (if I read it aright) is, that a master be appointed to devise some othe' scheme, some other use to which the property may be applied.

189 An effort has been made (with what measure of success it is not material now to inquire) to show that conditions have changed since the adjudication in this case was made.

But I have not supposed the binding force of the decree as an adjudication can be avoided in this way.

To adopt the scheme suggested by these defendants would in my judgment be to practically annul or disregard the decree under which this court and its master in chancery are now acting.

2.

A plan has been proposed by Abraham O. Smoot and others, represented by J. W. Judd and King and Houtz, attorneys, in favor of a school known as "Brigham Young Academy," located at Provo, Utah, by which it is sought to have this fund, or some portion thereof, applied to payment of the debts of said institution and to the maintenance thereof.

Willard Young, president of "Young University," an institution founded, or about to be founded, at Salt Lake City, represented by Richard W. Young, as attorney, has proposed a scheme in behalf of said university, asking for the application of the fund to the endowment of a department of law in said institution.

The United States, by its attorney, Hon. C. S. Varian, submits a scheme to the effect that the fund be applied to the use and for the benefit of the common schools of the Territory.

The applications filed on behalf of Brigham Young Academy and Young University show that each of said schools is a sectarian institution, under the control of the Mormon Church for instruction, among other
190 things in the principles of the Gospel as taught by the Church of Jesus Christ of Latter-Day Saints, and for instruction in the higher grades in science, literature, art, etc.

A part of the plan, purpose, and scope of these schools appears to be the inculcation of the doctrines, tenets, and faith of the Church of Jesus Christ of Latter-Day Saints, which, according to the evidence adduced before me, still embraces the doctrine of polygamy or plural marriage.

Wilford Woodruff, the president and head of the church, in speaking of his manifesto issued Sept 25th, 1890, by which it is claimed the practice of polygamy was abolished, testified as follows on his cross-examination by Mr. Varian:

Q. Mr. Woodruff, is this Exhibit A, annexed to this paper, the original manifesto or announcement by you, or is not this one that was subsequently made in answer to statements appearing in the telegraphic dispatches to the press of the country?

A. I never made but one that I recollect.

Q. Did you understand by this declaration a tenet or principle of faith of the church over which you presided was changed in any degree?

A. No, sir; I do not know that I did with regard to the principle.

Q. Does your church derive its principles of faith and rules of conduct from the Bible, the Book of Mormon, of doctrines and covenants and the revelations of Almighty God?

A. Yes, sir.

Q. Was the principle of plural or celestial marriage derived through a revelation?

191 A. Yes, sir; the principle that has been adopted by the church was.

Q. Is not the principle of plural marriage still a tenet of the faith of your church?

A. Yes; I believe the church believes in the principle.

Q. Would it not have to be changed by the same power and authority f'om which it is derived as a principle?

A. Yes, sir; I may remark that a principle may be believed in by the church, a true principle, and still not be practiced.

Q. You don't understand, then, that the people of your church indicated, by accepting your declaration, that their views or beliefs upon the principle involved were at all changed, but only that they were willing to follow your advice in submitting to the conditions that confronted them?

A. Yes, sir; I view that to be about the ground.

A belief in the doctrine or the principle of polygamy is not criminal.

The church and its people avoid criminal liability when they abandon its practice, which they claim they have done. Still it is not in accordance with a sound public policy to permit or encourage the teaching in the schools of the country doctrines or ideas the practice of which the Government finds it necessary to prohibit.

This fund has, as stated in the decree of the Supreme Court of the United States, devolved to the United States. It is the charge and the duty of the Government to see that it is limited and applied to uses
192 wholly lawful and free from objection. If these sectarian schools are faithful to the church which fosters and supports them, their teachings must necessarily have an unhealthy taint.

It can only be when the church revises its creed as well as its practice that the schools organized to teach its doctrines will become wholly unobjectionable from a standpoint of sound public policy.

The advantages afforded by these institutions will necessarily be enjoyed by comparatively few in number of the whole people of the Territory, and as a rule will be within the reach only of the wealthier classes. The work done by the higher institutions of learning ought not to be underestimated. But the great advantage growing out of a good system of public schools lies in the fact that it comes to the very doors of all the people, and the rich and the poor alike may enjoy its benefits on equal terms.

The children of Mormon parentage and of school age in this Territory are perhaps as five to one compared with the number of Gentile parentage.

The placing of this fund to the endowment of the public schools will bring its benefits directly home to the poorer classes of the people, to the homes of children who may never be able to enter an academy or a university.

It has been suggested in argument that the devotion of this fund to the public schools will be a violation of the intention of the donors.
193 That it will not be a "limiting and appointing it to such charitable uses as may most nearly correspond to those to which it was originally destined."

George Q. Cannon, one of the first presidency of the church, testified as follows:

Q. State what you know about the intention of the donors who contributed this money and property, as to what disposition should be made of it, and to what use and purpose it should be applied.

A. They were donated for religious and charitable purposes, and the disposition of it, as to how it should be expended, all that is left and entirely to the first presidency of the church. I know that to be the feeling of a great many of the contributors myself.

Q. Well, as far as your knowledge extends, was that the intention of all?

A. Yes, sir.

The uses to which this fund was in fact put by the first presidency from the organization of the church corporation to the time the receiver took possession of it were numerous and varied.

They builded temples and meeting-houses; they built and operated a theater; they constructed water dams and canals; they invested in the stock of "Zion's Coöperative Merchantile Institution" and in gas stocks. They constructed and operated a telegraph line; they had bands of horses and herds of sheep; they contributed to the support of the poor of their church; they donated to the Indians; they colonized settlements of Indians who desired to sever their tribal relations, furnished them teachers,
194 tools, machinery, sawmills, etc.; they contributed to their church schools, and in fact made such disposition of the fund as in the judgment of the first presidency was necessary or expedient for the interest of the church and its people.

I think it may fairly be said, as a result of the testimony on this point, that the intention of the contributors to this fund was to pay their tithing to the church, and to leave all matters relating to the use which should be made of the fund so created to the discretion of the leaders of the church. When the sources from which it was contributed and the uses to which it was applied are considered together, the fund is impressed with the character of a religious and charitable fund.

But it can not be said that any specific charity was within the purview of the donations.

The uses to which this fund was being applied are adjudged to be unlawful, and the court in making a cy pres application of the fund is not, in my judgment, confined to any particular charity or class of charities, but the whole range of legitimate charities is open before it. Any purpose which comes within the definition of the word "charity" in its broadest sense may be selected. But this discretion of the master and of the court in the selection should be so exercised as to give the fund a direction as nearly akin to its original destination as can lawfully be done.

And where no specific intention on the part of the donors can be
195 ascertained, the application should correspond, as nearly as lawfully may be done, to the use to which the fund was formerly devoted.

Education properly directed is a legitimate charity. It is, in fact, the broadest charity. It is directly in line with former uses of a considerable part of this fund. The application to the public schools is a use in the highest possible interest of the Mormon people.

This fund, supplementing the proceeds of the real estate, of which Congress has already made a like application, will make a handsome endowment, and with wise legislation for its government will make our public school system the crowning glory of the Commonwealth.

3.

Mr. Fred. J. Kiesel and others, represented by A. C. Bishop, A. R. Heywood, and H. P. Henderson as counsel, have proposed a plan, in effect that a board of charity be appointed by the court for the counties of

Weber, Cache, Boxelder, Morgan, and Rich and that ninety thousand dollars of said fund be set apart to be managed and disbursed by said board for charitable uses in said counties. I understand the direction of the Supreme Court to be that some definite mode of application of the fund be determined upon by the master and reported to the court for consideration.

That being done, I believe the fund can be more economically handled together than to separate it into parts. The management of each
196 separate part, it appears to me, would involve as much expense as the management of the whole fund together.

Under the plan reported, if same shall be adopted by the court, each of these counties will receive their proportionate share of the benefit from the whole fund.

The ultimate facts material to be considered in determining the application to be made I find to be as follows:

1. The fund in question grew out of contributions made yearly in small sums by the members of the Church of Jesus Christ of Latter-Day Saints to said church, and out of the investment of said contributions and the income thereon, said contributions being in the nature of tithing exacted by the church from its members.

2. The intention of said contributors in making said contributions was to pay to the church their tithing for the support of the church and to be devoted to such religious, charitable, and other uses as the first presidency might direct. But that no specific charity was within the intention of said contributors, it being the intention of said contributors that the disposition of said funds as to how they should be expended should be left entirely to the discretion of the first presidency of said church.

3. That said fund was, in fact, used by the first presidency for the construction of temples and meeting-houses, for the support of the poor of said sect, for educational purposes, and other uses in the discretion of said first presidency.

197 4. That since the rendition of the decree in this cause the practise of polygamy has been abandoned by the Church of Jesus Christ of Latter-Day Saints, but that the principle is still retained by said church as one of the tenets and cardinal points of its faith.

Wherefore I beg to report to the court and recommend for its consideration an adoption of the following scheme for application of the funds in question:

1. That the said funds be constituted a permanent school fund for the perpetual endowment of the public schools of the Territory of Utah.

2. That a commissioner be appointed by the court to have custody and control of the fund, to loan the same within the Territory, in bulk or in parcels, on real estate and personal security, or invest the same in school or other municipal bonds within the Territory, either at the discretion of the said commissioner or under the direction of the court.

3. That the said commissioner be required to enter into bond in such sum as may be fixed by the court, with sureties satisfactory to the clerk, conditioned for the faithful execution of the said trust.

4. That the said commissioner be required to report to this court, under oath, on the first day of January and July of each year, the amount of the

funds in hand in cash, the amounts loaned or invested, showing in
198 detail the condition of such loans or investments, and the amounts of interest received thereon up to the date of such report.

5. That the income from said fund remaining after paying the salary of said commissioner and other expenses of the care of the fund be by the said commissioner apportioned ratably among the several counties, according to the number of children of school age in each, as shown by the last preceeding school census, and the portion so allotted to each county be on the 1st day of January of each year paid over by said commissioner to the treasurer of said county, to be by said treasurer disbursed for the maintenance of the public schools of said county in like manner and proportion as school taxes collected in said county are disbursed.

Respectfully submitted.

C. F. LOOFBOUROW,
Master in Chancery.

(Endorsed:) Title, court, and cause. Report of master in chancery, C. F. Loofbourow. Filed Jan. 15, 1892. Joseph P. Bache, clerk.

199 In the supreme court of Utah Territory.

THE UNITED STATES OF AMERICA, PLAINTIFFS,
vs.
THE LATE CORPORATION OF THE CHURCH OF Jesus Christ of Latter-Day Saints *et al.*, defendants.

Supplemental report.

At the suggestion of counsel for the Government, I beg to submit the following report as to the time when the several applications herein were filed with me as master.

My commission as master from this honorable court bears date July 1st, 1891.

The hearing of the matter submitted to me began October 19th, 1891, and occupied all of the then current week.

At the said hearing four several schemes were presented to me, viz:

1st. That of the Government.

2nd. That of Wilford Woodruff and others, representing the unincorporated association of people late members of the Church of Jesus Christ of Latter-Day Saints.

3rd. That in behalf of Brigham Young University.

200 4th. That of the people of Weber and other counties.

Afterwards and about the 19th day of December, 1891, Hon. J. W. Judd presented to me the petition of A. O. Smoot and others, in behalf of Brigham Young Academy, which petition I indorsed, filed on the day on which it was presented to me. No evidence was introduced in support of it, and no proceedings had upon it, except that I examined the petition and the brief presented to me by Judge Judd and returned the petition with the original report.

Respectfully submitted.

C. F. LOOFBOUROW,
Master in Chancery.

(Endorsed:) Title, court, and cause. Supplemental report of master. Filed Sep. 2, 1892. Jos. P. Bache, clerk.

201 In the Supreme Court of the Territory of Utah.

THE UNITED STATES, PLAINTIFF,
vs.
THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS, *et al.*, defendants.

Hearing before Hon. C. F. Loofbourow, special master, October 19–24, 1891.

Appearances: For plaintiff, C. S. Varian, J. L. Rawlins, J. A. Marshall; for defendants, F. S. Richards, W. H. Dickson.

(Marked:) Filed January 15, 1892. Joseph P. Bache, clerk.

203 MONDAY AFTERNOON, *October 19th*, 1891.

Mr. VARIAN. I am ready to state on the record, as counsel for the United States, the objection to the consideration of the scheme proposed by and on behalf of the defendants named, to wit, Wilford Woodruff, Lorenzo Snow, Franklin D. Richards, Brigham Young, Moses Thatcher, Francis M. Lyman, John Henry Smith, George Teasdel, Heber J. Grant, John W. Taylor, William B. Preston, Robert T. Burton, John R. Winder, Francis Armstrong and Jesse W. Fox, and on behalf of all other members of the religious association known as the Church of Jesus Christ of Latter-Day Saints, and to the hearing of any evidence in support thereof, on the ground and for the reason that, by the final decree in this case, it was and is finally adjudged and determined that the whole corporation of the Church of Jesus Christ of Latter-Day Saints, having become by law dissolved as aforesaid, there did not exist at its dissolution, and do not now exist any trusts, or purposes within the objects and purposes for which said personal property was originally acquired, as hereinbefore set out, whether said acquisition was by purchase or donation, to or for which said personality or any part thereof could be used, or to which it could be dedicated, that were and are not in whole or in part opposed to public policy, good morals, and contrary to the laws of the United States; and furthermore, that there do not exist any natural persons, or any body, association or corporation, who are legally entitled to any portion of
204 said personality, as successors in interest to said Church of Jesus Christ of Latter-Day Saints; and the said personal property has devolved to the United States, and not being lawfully applicable to the purposes for which it was originally dedicated or acquired and to which, at the commencement of this suit, it was being devoted by the said corporation and its controlling authorities, the same ought to be limited and appointed to such charitable uses and lawful in their character as may most nearly correspond to those to which it was originally destined; and that by said decree it was furthermore finally adjudged and determined that any dedication or setting aside of any of the personal property hereinbefore set out as having belonged to the late corporation, to the uses or purposes of or in trust for the members of the late corporation of the Church of Jesus Christ of Latter-Day Saints, or any of them, would practically and in effect be a dedication and setting aside of said personal property to the uses and for the purposes of and in trust for the unincorporated religious sect known as the Church of Jesus Christ of Latter-Day

Saints. And that it was by said decree further finally adjudged and determined upon the intervention of George Romney, Henry Dinwoody, James Watson, and John Clark, made on behalf of all the members of the unincorporated association above mentioned. That neither said intervenors, or those in whose behalf they filed said petition, have any legal claim and title in and to said property or any part thereof. And that it was by said decree further finally adjudged and determined that the objects
205 and purposes of the late corporation were in part unlawful, and that the charities dispenses by it were subject and according to the practices, teaching, tenets, of said Church of Jesus Christ of Latter-Day Saints, including the practice and teaching of polygamy.

The COURT. Let the evidence be furnished by these defendants be received subject to this objection and subject to the final consideration and argument.

Mr. VARIAN. Yes, sir; we only expected to make the former objection.

GEORGE Q. CANNON, being sworn as a witness in behalf of the defence, testified as follows:

Direct examination by Mr. RICHARDS:

Q. What is your age?

A. 64.

Q. Where do you reside?

A. Salt Lake City—or Salt Lake County, rather.

Q. How long have you resided in this Territory?

A. Well, since—I came here in 1847; I resided here ever since; been my residence.

Q. What official position, if any, do you hold in the Church of Jesus Christ of Latter-Day Saints?

A. I am one of the first presidency of the church—counsellor to President Woodruff—first counsellor.

Q. How long have you held that position or been a member of the first presidency of the church?

206 A. Well, I was elected one of the first presidents of the church in the first place in 1880—October, 1880—and I held that position until the demise of President Taylor; and there was an interregnum since that time up to the present I have been first president.

Mr. VARIAN. Bowman was subpœnaed by me, and he appears in answer to the subpœna. I would like to have it entered that he already appeared, and we will excuse him until another day.

Mr. DICKSON. Until what day?

Mr. VARIAN. We will determine that when you get through.

Mr. DICKSON. We will get through to-morrow.

Mr. VARIAN. I think Wednesday morning will be satisfactory.

Mr. DICKSON. I would like to have the argument, so far as I am personally concerned, concluded by Friday evening. I will not be able to argue it if they are not until the middle of December.

Mr. VARIAN. I don't know as there is any particular hurry.

Mr. DICKSON. We think there is. Personally, we are anxious of disposing of it.

Mr. VARIAN. If you can not get through by to-day, we can go on to-morrow.

Mr. DICKSON. We supposed both sides were ready. I supposed the case had been specially set for to-day; unless one side is prepared to give some reason, why we are ready to go on. I don't think we are required to try the case by piecemeal. I don't think we are required to put
207 in our case and develop it fully and place it in the position of counsel on the other side, and then adjourn until they suit their convenience. We informed them sometime ago of the scheme we were going to propose here; that is, we would ask that the account be investigated, and that the proceeds be applied in part to the relief of the poor and the building of places of worship. Now, we would have an objection to going on and introducing our case here, and then adjourn it to sometime in the future.

Mr. VARIAN. What time in the future? If you mean Wednesday morning——

Mr. DICKSON. I would not object to that.

Mr. RICHARDS:

Q. What position did you occupy in the church prior to your election to the first presidency?

A. I was one of the counsellors—of the twelve apostles.

Q. How long were you an apostle in the church?

A. I was chosen—elected to that position—in 1859.

Q. And have been an apostle ever since?

A. And have been an apostle ever since.

Q. Do you know the defendants in this action, Wilford Woodruff, Lorenzo Snow, Franklin D. Richards, Brigham Young, Moses Thatcher, Francis M. Lyman, John Henry Smith, George Teasdel, Heber J. Grant, John W. Taylor, William B. Preston, Robert T. Burton, John R. Winder, and Francis Armstrong and Jesse W. Fox?

A. I know all of them.

Q. State whether or not all of them are members of the Church of Jesus Christ of Latter-Day Saints?

208 A. They are all members in good standing in the church.

Q. What has been the status of the church since the dissolution of the church corporation by the act of Congress in March 7th, 1887?

A. Well, it has been a voluntary religious organization.

Q. Voluntary religious association?

A. Association—society, yes.

Q. Who is the president of the church?

A. Willford Woodruff.

Q. How long has he held that position?

A. He was elected president of the church in April, 1889.

Q. Who was the head of the church prior to that time—immediately prior to that time?

A. Between the death of President Taylor and that time the 12 apostles acted as the first presidency of the church.

Q. Who was the president of the apostles?

A. He was also president of the 12 apostles.

Q. That is, Willford Woodruff?

A. Wilford Woodruff, yes.

Q. And he officiated as the head of the head of the church during that time?

A. Yes, sir; practically the head of the church.

Q. Who was president prior to the death of President Taylor?

A. John Taylor himself 'as president of the church.

Q. When was he president of the church?

A. He was chosen president in the fall, in October, 1880.

Q. Who was the head of the church from that time back until the death of Brigham Young?

209 A. The 12 apostles were. They occupied the position of the first presidency, as the death of President Young brought *a* about a dissolution of the first presidency.

Q. Who was the president of the apostles?

A. Jo*y*n Taylor.

Q. Now, state whether or not, during the time that John Taylor presided over the church as president of the 12 apostles, from 1877 to the death of Brigham Young, until 1880, you acted as counsellor to him, and also whether you acted in the same capacity towards Wilford Woodruff, from the time of the death of President Taylor, in 1887, while he, Wilford Woodruff, acted as president over the church and of the 12 apostles?

A. I was officially a counsellor, as there was no first presidency.

Q. You acted as first counsellor?

A. Yes, sir.

Q. So that you acted in that capacity although not holding that official position?

A. I suppose I might say so with propriety.

Q. What position in the church do the defendants Lorenzo Snow, Franklin D. Richards, Brigham Young, Moses Thatcher, Francis M. Lyman, John Henry Smith, George Teasdel, Heber J. Grant, John W. Taylor, William B. Preston, Robert T. Burton, John R. Winder, Francis Armstrong, hold?

A. They are members of the counsel of the 12 apostles.

Q. Do you remember the seizure of the property of the church by the receiver in this action, in 1887?

A. Yes, sir.

Q. You may state, if you know, how the money and personal
210 property now in the hands of t'e receiver which is involved in this action was acquired by the Church of Jesus Christ of Latter-Day Saints.

A. Well, it was by voluntary contributions of the members of the church for religious and charitable purposes.

211 Q. State whether or not the property now in the hands of the receiver is the identical property contributed by the member of the churc'.

A. Some portion of it is the identical property that was dj*o*'ated; other portions are the results of the disposition of the property that was contributed.

Q. Then, it is either all the identical property or the proceeds of the property?

A. The proceeds of the property itself.

Q. That had been contributed?

A. Yes; that was contributed.

Q. State whether or not all of this property is money and personal property that was contributed prior to March 3rd, 1887, or the proceeds of money and of personal property that was contributed to the church by members of the church and by no other person.

A. All this property that is involved in this suit or in this litigation is the direct contribution of the identical property, or the proceeds of it, and it was none of it contributed by any but members of the church, as I understand it, to the best of my knowledge.

Q. Well, you know about that, don't you?

A. Well, I do know as well as anybody can know anything of the kind.

Q. What was the custom of the members of the church in regard to making contributions?

A. Well, from the organization of the church it has been the custom of our people to contribute, in small amounts usually, for religious and charitable purposes.

212 Q. Under whose directions were these contributions controlled, managed, and disbursed?

A. Under the directions of the first presidency of the church.

Q. How long has that been so?

A. That has always been the custom.

Q. That it has always been the custom since it has been the custom to make contributions?

A. Yes, sir.

Q. And how long has it been the custom to make contributions?

A. Well, from the very first organization of the church.

Q. What was the custom prior to March, 1887, as to the president and trustee in trust of the church, making reports to the conference of the church as to the disposition made of the money and property contributed by the members?

A. From the time that President Taylor was elected president, and in fact before, while he was yet president of the twelve, it was a custom of his, up to the year 1885, to make statements to the general conference of the church concerning the moneys that were contributed and how they were disposed of—money and property.

Q. State whether or not these reports were full and complete statements of all the money property.

A. They were full and complete, according to my recollection of them, and were always unanimously accepted by the conference.

Q. To what purpose were these donations or contributions applied?

A. They were for religious and charitable purposes; some of
213 the proceeds were expanded on temples and on meetinghouses—places of worship, and for the poor, and such charitable objects as arose.

Q. When you speak of meetinghouses, do you mean by that places of worship?

A. Places of worship; yes, sir.

Q. For the worship of God?

A. The worship of Almighty God.

Q. And by whom?

A. By the people who contributed these funds.

Q. Do you mean by that the members of the Church of Jesus Christ of Latter-Day Saints?

A. The members of the Church of Jesus Christ of Latter-Day Saints, yes.

Q. What poor people were aided and assisted in the way you speak of?

A. The poor of the church.

Q. The poor members of the church?

A. The poor members of the church; we also assisted poor Indians.

Q. Satate what you know about the intention of the donors who contributed this money and property, as to what disposition should be made of it, and to what use and purpose it should be applied.

A. They were donated for religious and charitable purposes, and the disposition of it, as to how it should be expended, all that is left and entirely to the first presidency of the church; I know that to be the feeling of a great many of the contributors myself.

Q. Well, as far as your knowledge extends, was that the inte'tion of all?

A. Yes, sir.

214 Q. What amount of means was spent annually by the church prior to March 3rd, 1887, in relieving the poor and distressed members of the church and their families? Fix the minimum amount.

A. I have a recollection of one hundred and twelve thousand and odd dollars being expended for various charitable purposes one year; another year I remember there was seventy-four thousand and odd dollars; I would think myself that there would anywhere from seventy-five to a hundred thousand expended annually.

Q. Now, wtate what charitable purposes you mean—whether this was devoted to the relief of the poor.

A. Of the indigent among the people.

Q. If I understand you correctly you s'y that from seventy-five thousand to a hundred thousand dollars was expended annually for the relief of the poor and distressed members of the church?

A. Yes, sir; and I might include in that poor Indians; we have assisted the Indians to a great extent where they we'e destitute.

Q. What portion of that would go to the Indians?

A. Well, they might get five thousand; up to five or perhaps ten thousand, but not exceeding that, I think.

Q. Then, with that except'on, the amount that you have stated was devoted to the relief ads a'isstance of the poor and distressed members of the church?

A. Yes.

Q. What amount will be required to be expended annually hereafter for the relief and assistance of the poor members of the church, to the best of your opinion?

215 A. Well, I should think not less than seventy-five thousand, nad perhaps it might run up to a hundred, if anything like the demands that are made upon us are answered.

Q. What amount has been expended annually prior to 1887 for the erection a' maintenance of meeting houses and hou'esses of worship, not including temples?

A. Well, I should think it would not be less than fifty thousand dollars per annum.

Q. That has been expended in the past?

A. Yes, sir; up to 1887; remember, that since 1887 our finances have been so reduced that we have not been able to supply the demands that have been made upon us.

Q. What amount will be required in your opinion in the future to be expended for the maintenance and erection of houses of worship, not including the temples?

A. It would take fifty thousand dollars; it certainly would to comply with all the requirements and requests that have been made upon us. I want to say here, perhaps in explanation of this, that we have, since 1887, since the seizure of this property, been compelled to lay aside numerous applications for help in the erection of meeting houses, and they stand now on file ready to be taken up.

Q. Would this fifty thousand dollars per annum that you speak of be required for necessary places of worship for members of the church?

A. I would think so.

Q. How many meeting houses and places of worship are there belonging to the church, exclusive of the temple?

216 A. There must be not very far from two hundred, if any.

Cross-examination of George Q. Cannon by Mr. RAWLINS

Q. This personal property in the hands of the receiver, a portion of it consists of gass stock, doesn't it?

A. Yes.

Q. How was that acquired?

A. The ga' stock was in settlement of a claim of the church against the estate of President Brigham Young; he was owing the church at his death and I was one of his executors. We turned that over to the church in settlement of the clai' which the church had again't his estate.

Q. Do you know what that amounts to?

A. I think, in round numbers, if my memory serves me correctly, about eight thousand shares—seventy-nine hundred or eight thousand—somewhere in that vicinity.

Q. After it was turned over to the church, in w'ose name was it held?

A. It was held, as I remember, by John Taylor, trustee in trust. We turned the property over to him as trustee in trust.

Q. Prior to that time, during the life of Birhgham Young, it was held in his individual name?

A. It was his own property.

217 Q. What income was derived from gas stock dur'ng the time that it was held by John Taylor, as trustee in trust, or are you familiar with it?

A. I may not be altogether correct, but I am under the impression that there was six thousand dollars dividend.

Q. Do you know whether the church kept any separate account of that income?

A. Oh, it was a part of the property, you know, of the church.

Q. I know, but as to the income derived from that particular species of property, was there a separate account kept of that, as to what this disposition was made of it?

A. No; it went into the general fund.

Q. Then you are unable to say, I suppose, from that statement, what particular use of this was made?

A. It was devoted, of course, as all the rest of the property was, to the religious and charitable purposes?

Q. That is all purposes for which money was used by the church under the direction of the first presidency?

A. Yes.

Q. But as to whether that went to the poor, or how much of it went to the poor, you could'nt say, referring to that six thousand dollars?

A. No; it was not segregated; it went in and was disbursed just as all the funds of the church were.

Q. Now, in what year was that six thousand dollars derived as income from the gas stock?

A. Well, as I remember, it was the aggregation of the dividends at the time it was turned over to the receiver.

218 Q. Were these dividends received personally by the trustee in trust?

A. Yes.

Q. The telegraph stock—how was that acquired?

A. The telegraph line was built by the people throughout the various settlemetns and it was credited—placed to their credit as donations, and the church acquired the property; there were some few persona who held stock in the company—individual stock. It was a necessity in those days for rapid communication on account of the Indian trouble, and it was deemed a wise project to erect telegraph lines, and the people were called upon throughout the various settlemetsn to contribute to it; and they afterwards received credit for it.

Q. The line was built by the people?

A. By the people; yes, sir.

Q. In the Territory?

A. A great many individuals.

Q. Who held the stock?

A. It was held by the trustee in trust.

Q. Was there any income derived from that property at all?

A. No; it never paid expenses, speaking in general terms.

Q. To what uses was it put; was it used as an ordinary telegraph line?

A. Used as an ordinary telegraph line; it was used especially in times when there were Indian difficulties, to put the people on their guard.

Q. Are you familiar with the property in the hands of the receiver?

A. Somewhat so.

219 Q. The promissory notes in the hands of the receiver—considerable of that was derived from real estate, as I understand it, the theater?

A. The theater was sold by President John Taylor to certain parties, and he took their promissory notes.

Q. Notes were given by them?

A. Notes were given drawing six per cent interest.

Q. And those notes were turned over to the receiver?

A. They were turned over to the r'ceiver; yes.

Q. One note, for $3,333.32, bearing six per cent interest from date, signed by Sharp and Little; that was one of those notes, was it?

A. Yes.

Q. Another dated March 2nd, 1887, due and payable to John Taylor, trustee in trust, or order, two years after date, and calling for $1,666.66, signed by Le Grand Young; that was another of the same?

A. Yes, sir.

Q. One promissory note, dated March 2nd, 1887, payable to the order of John Taylor, trustee in trust, calling for $4,833.33, with six per cent interest from date, signed by James Jack?

A. Yes; is another.

Q. One promissory note, dated March 2nd, 1887, payable to John Taylor, trustee in trust or order, calling $5,000.00, with six per cent interest, signed by H. B. Clawson?

A. Yes, sir.

Q. That is the whole of those notes?

A. Yes.

220 Q. That was part of the consideration derived from the sale of the Salt Lake theater?

A. Yes, sir.

Q. And while that theater was held, I suppose it was used for theatrical purposes?

A. For theatrical purposes; giving of performances.

Q. For the purpose of amusement?

A. Of amusement.

Q. How long were those notes held before they were turned over to the receiver—I suppose those notes were given as they bear date?

A. As they bear date, yes; I don't remember just how long it was; I remember the transaction, but I would have to think a while to recall the exact date.

Q. The theater was never used for any other purposes than that you have stated?

A. Excepting, of course, occasionally lectures were given in it, but the general purposes was the representation of theatrical plays.

Q. How long had the theater been held for that purpose by John Taylor, trustee in trust for the church?

A. In the settlement of Brigham Young's executors that property was turned over to the church as a part of the consideration to pay that which he was owing.

Q. It was acquired in that way?

A. It was acquired in that way.

Q. That was about 1879?

A. It was in say, 1878, that that was turned—in April, 1878, with the other property.

221 Q. Was there any income derived from the theater during that period?

A. Generally the theater barely paid expenses.

Q. There was nothing derived from it?

A. Nothing much derived from it; there was at times, you know, according to the season, there would be something probably in excess of the expenses; there was very little income derived from that source.

Q. And to all entertainments, of course, the public generally were invited?

A. All invited.

Q. It was not maintained exclusively for members of the church?

A. I don't know that it would be proper for me to say that the design—I don't know that you mean to go into the notes.

Q. I am simply inquiring as to the use that it was put to during the time that it was held by the church, from 1878 to 1887?

A. Yes; that was the use; and that was the reason of its erection, it being considered to provide the people with amusements, and that there should be a respectable place for the amusements; that was the design originally.

Q. The $30,158 sheep, how were they acquired?

A. They were the identical property contributed by donors.

Q. By people throughout the entire Territory?

A. Yes, sir.

Q. And I suppose to some extent outside?

A. There may have been instances where they came from outside the Territory.

222 Q. How long had these sheep been held in flocks?

A. They had been the accumulation of some years.

Q. About how many years?

A. Well, would not think it was very many; we have always had herds, at least flocks of sheep on hand in that way, the object being to supply the wants of the poor people in many instances, and then to pay workmen.

Q. Now, the proceeds derived from these sheep, who received them?

A. They were handled under the direction of the trustee in trust.

Q. Was the wool disposed of directly—that is, to these charitable uses that you mention—or was it sold and received in cash?

A. Generally sold and received in cash, and the cash used.

Q. The cash was turned into the hands of the——

A. Trustee in trust.

Q. And how was that disbursed?

A. Disbursed under his direction for these various purposes, to which I have referred.

Q. During the time, say of President Taylor's administration, were there any particular persons who had charge of the disbursement and keeping of the accounts?

A. Well, his chief clerk; he had clerks in the trustee's office.

Q. These moneys when received were disbursed for the general church purposes?

Q. For general church purposes.

Q. Did any part o' this fund go abroad for relief to members of the church outside of the Territory?

223 A. Well, I ought to say that it went to the branches of the church, or the wards of the church in the mountains here; none outside of this inter-mountain region.

Q. These expenses that were to be met by the church included generally what?

A. Well, a great deal was spent, as I said, for temples, and for meeting houses, and poor, and helping settlements; I may say here, and probably it would be proper, that one of the causes of there being so much talk about church and state, among us, has been the fact that we have been endeavor-

ing to practically out the teachings of the Savior, concerning the helping of the poor; that many of these settlements, I wish to say, that are now tolerably flourishing in these mountains, that the people could not have lived there if they had not been helped in their emergencies out of this fund; there are many settlements——

Q. I am not asking at all, Mr. Cannon, for the reasons; I am just asking to ascertain the fact, as nearly as I can of the application.

A. Well, that ought to be included in the uses to which the money was put.

Q. Part of this was expended, was it not, in promoting various business enterprises?

A. Yes, sir.

Q. For the development of the country?

A. Yes, sir; for the development of the country, if you may call helping the people in their straits business enterprises, why, it was used for that.

224 Q. It has been used to some extent, hasn't it, in setting on foot business enterprises?

A. Very little for that; that is, what would be called really business enterprises; very little.

Q. It has been used to defray the expenses of circulating literature, hasn't it—church publications and documents?

A. No; there has been very little; not neqr so much as there ought to have been.

Q. How were these disbursements made to the poor?

A. The rule has been—the bishops of the wards have sent reports semi-annually, each ward being credited with the amoun' that the relief societies had supplied; the amounts that had been collected from fast offerings, monthly offerings; and they have a column set apart for the amount needed by the poor, in that ward, for the six months.

Q. Well, do I understand you to say, for instance, contributions are made in all the different wards by the Mormon people for church purposes, and they are permitted to retain a portion of this to meet the demands for the supoopp'rt of the poor in the particular wards?

A. After the appropriation has been made.

Q. But the moneys that go to the poor go directly from the contributions made in the different wards?

A. Yes.

Q. So that there is no part of the fund that goes directly into the hands of the head of the church that is disbursed?

225 A. It all goes into his hands excepting these monthly fast offerings and the relief society fund; the monthly fast offerings are retained in the hands of the bishop; they are paid in to him by the different members of the church every month, and the relief societies handle their own funds, but the claim is made on thr trustee or was made on the trustee in trust for additional funds to meet the wants of the poor in the several wards.

Q. To illustrate what I mean so that you may understand me: Suppose in Cache County, say at Logan, there is a certain amount of contributions raised by the members of the Mormon Church for the support of the church

there, annually, and a certain amount needed for the support of the poor, would the amount of contributions exceed or be less, ordinarily, than the amount necessary for the support of the poor, say, in that locality?

A. Oh, it would generally be less; their contributions would not be all consumed by the poor in many instances; in some instances it would.

Q. Would they send their money to the trustee in trust here at Salt Lake, say, and then would a portion of that be returned?

A. Yes; that is, it would be 'laced subject to his order, whether it was sent from there or retained there.

Q. As a matter of fact, the poor would receive what they got at Logan?

A. Yes.

Q. And out of the contributions made at Logan?

A. There are exceptions to that in many instances.

226 Q. Isn't that the ordinary way?

A. The ordinary way.

XX Q. Ordinarily that would be the case, but in many instances there would not be sufficient funds in the wards to supply that demand, and in that event orders are given on other places contiguous; it would not be the case in Loga' because it is a large town, but in many places that would have to be done; we would have to give orders on contiguous settlem'tsn to meet the requirements.

X Q. That is say Logan contributed more than would be for various church purposes there?

A. Yes.

Q. Including the support of the poor and the adjoining settlement contributed less than was necessary for the poor, a demand might be made on Logan to furnish that deficiency?

A. Yes.

Q. As a matter of fact, this money, so derived from sheep, which would go into the hands of the trustee in trust, that identical money would be disbursed to the poor and pass into their hands?

A. Well, yes; I could say that; that is not the same currency, you know, or the same coin.

Q. I mean the same identical money that would be derived, it would go into the general fund?

A. It would go into the general fund, as I say, and be disbursed from that 's necessity would require.

Q. What agency is employed by the church for the purpose of ascertaining who are the poor, and furnishing them with the needed assistance?

A. The bishops.

227 Q. The bishops in the different wards?

A. In the different wards.

Q. I see that there is $237,666.16 cash in the hands of the receiver; do you know what that represents?

A. That is property—this house that we are now in stands on grou'd that had been sold by the trustee in trust; across the way that corner lot was sold by the trustee in trust, and a demand was made upon us for that property; innocent purchasers had paid their money for it and we agreed to give the purchase money to receiver in lieu of this land; that forms two items; I think $42,000 was paid for one, in round numbers $42,000, and $36,000 for the other; then the church had derived, as it did the gas

stock, from President Brigham Young's estate, in settlement, street railway stock, amounting, I think, to $35,000 or $50,000, somewhere in that neighborhoo'; that also formed a part of this amount that you mention. There was the gas stock, I think, forms a part of this; no, that probably would be separate, but that amount consists——

Mr. RICHARDS. Excuse me, Mr. Rawlins, while I make the suggestion that we all know of the $75,000——

WITNESS. Yes; the $75,000 I remember; I am glad you mentioned it; the $75,000 of that amount was made in lieu of this property that had been distributed by President John Taylor, at least had been turned over by him to the ecclesiastical ward corporations, in February, before the passage of t'e law.

Mr. DICKSON. Personal property?

A. It was mentioned this morning, and in order to prevent any
228 other litication on that, expecting to settle it entirely, it was agreed that we should pay $75,000; a great deal of that property had been consumed, and it was old property, and this compromise that was made, that forms part of this $237,000.

Q. Then all except the $75,000, as I understand it, was turned over in lieu of real estate which had been disposed of, supposed to represent the consideration?

A. Yes.

Mr. DICKSON. Not all real estate?

A. No. There were two pieces of real estate—or three, rather. There was a piece of real estate up here, $5,500, on the other side of th' street—on South Temple—and these two pieces.

Q. This piece and the Wells corner?

A. That settlement was made with the receiver and the Government, I believe.

Q. So that the total amount derived from the com*rp*omise of the real estate was how much?

A. There was forty-two thousand and odd dollars in one piece and thirty-six thousand and odd dollars in another, as I remember.

Q. This $75,000—how was that obtained or from what source derived?

A. From funds of the church. We raised it and gave our notes for it. We had to give our personal obligations to raise the money.

Q. Mr. Cannon, does the church keep a record of the number of poor persons—those who are in need of support?

A. No. They may in the various wards. I don't think they keep any regular statement of that to preserve. They do it for the time being merely, because they vary.

229 Q. Have you any means of knowledge by which you could state approximately the number of such persons?

A. No; I could not. I wouldn't like to haz'rd the statement concerning the number.

Q. When you mention that perhaps a hundred thousand dollar' would be necessary for the support of the poor, you base that upon reports made to you by the bishops?

A. Yes, sir.

Q. Or demands made by the bishops?

A. By the bishops. Now, as I explain to you, there is what we call a schedule, furnished us semiannually, brought before the attention of the first presidency; every ward is represented. Some of the wards do not need help; there are others, like some of the wards here in the city, where they need a great deal of help—a great many poor. Each ward states the amount of money received from the fast offerings, as we term them; that is, every first Thursday in the month is a fast day, and every family contributes the amount that they would eat that day for the assistance of the poor, and that is turned over to the bishop; he keeps a record of that and gives us a statement of the aggregate; and these contributions for the six months, the relief societies—which are ladies, they give a statement, and he reports that also; then, there is a deficiency in the ward besides; notwithstanding these contributions, there is still a deficiency; he demands, or rather asks the first presidency to make an appropriation to meet that, and every ward is tabulated in that way, so that we know. Now,
230 my recollection of the last request made in that form was upwards of thirty thousand dollars for the half year. Besides this, we have constant appeals; I might mention names, if necessary—although it would not be proper—of people who have long been in the service of the church—elders who have labored, some of them for years, in the ministry without any fixed salary, who in their old age apply to us for relief, and we make appropriations. There is frequently this, one day after another, that we have calls of that kind; scarcely a week passes without having some request of that kind, and we appropriate of the funds under our control for that purpose.

Mr. DICKSON:

Q. These are people who are in actual distress?

A. Actual distress; indigent, and need the relief; therefore, I think I can say from seventy-five to a hundred thousand. I place it at a moderate amount; that would be my own knowledge of the condition of affairs.

Mr. RAWLINS:

Q. Have you figured up how many people that would support under ordinary conditions?

A. No; I never did.

Q. Of course, you have many requests; I suppose but very few of them are complied with?

A. By us?

Q. Yes.

A. Of course, whenever a case comes before us we, being familiar with the circumstances of the applicant, or, if we are not personally, we take means to obtain reilable information about it, and then we judge and decide.

Q. Isn't it true, as a matter of fact, that the responsibility of
231 maintaining the poor in any given ward is devolved by the authorities upon the people and members of the church of that ward?

A. Yes.

Q. And they are expected to maintain them?

A. They are expected—we have been trying to bring about such a thing, owing to our ——

Q. (Interrupting.) Now, as a matter of fact, contributions which they make there are to a very large extent applied to the maintenance of the poor in their respective wards, directly?

A. Yes, sir.

Q. It does not go through the expensive method of being transferred to a center, and being referred back to the people?

A. That depends upon the nature of the contribution; if it is a fast offering, it don't; if it is a relief society contribution, it don't; but if it is the other form it goes directly; it is not contributed for the poor alone, it is for general church purposes.

Q. That is, those contributions that you referred to, are in accordance with a rule of the church requiring a tenth of the proceeds?

A. Yes.

Q. And it is turned into the hands of the first presidency?

A. Yes.

Q. And subject to its absolute disposal for such purposes as in his discretion it is most beneficial for the interests of the church; isn't that it?

A. Yes, and the counsel.

Q. It is not then applied by the donor to any definite charity?

A. No; as I have said, these persons making these voluntary
232 contributions, they place them at the entire disposition of the first presidency; that is, under their direction.

Q. Of course that fund may be applied in the discretion of the head of the church to its ministry or leaders, who devote all their time to it?

A. Yes, sir.

Q. Providing for their support, and the support of persons in the employ of the church—all its different phases?

A. Yes.

Q. And it is applicable to any purpose which he in his judgment might think it is proper?

A. Within proper limits, of course.

Q. A very great proportion of it has gone for the erection of temples?

A. Yes.

Q. And various other purposes than the one mentioned here?

A. Yes; well, very often you know, in many of the wards the contributions have been in kind; it has required a great deal of means to take care of that property; a great deal of it has been consumed in that way. For instance, until recently we had to transport grain by wagon, and it was very costly, and the care of it has been a very serious cost to the church; hay, and other articles, that could not be disposed of in the place where they were contributed; they frequently contributed in kind, and that has involved a large expense, in the care of it—the building of storehouses, granaries; that has taken a great deal of means. Of course there have been agents to take care of the property and look after it; they have had to be employed.

233 Q. You are aware of the fact that the people, members of the church, have had the burden of educating their children, and in respective school districts of the Territory, either by voluntary contribution or taxation; they are required to contribute of their means for that purpose?

A. I know that they have to educate their children; of course I know that.

Q. Outside of Salt Lake City and Ogden the children to be educated are almost exclusively members of the Mormon Church, aren't they?

A. In general terms, I think so.

Q. Those different communities——

A. There are several places, Bingham and a number of other places, where there are not; but in the agricultural settlements, my answer would apply to them.

Q. Under the church, of course, these different communities have the burden of supporting them?

A. Yes, sir.

Q. Suppose this fund were applied to the support and maintenance of schools in the districts which have to be supported by the different communities in the Territory outside of these places, through the instrumentality of the school trustees, wouldn't the people be thereby relieved of the burden of contributions for the support of the poor, indirectly, to the same extent as if it were applied for the benefit of the poor?

Mr. DICKSON. We object to that; it is not a proper question; it is a matter for the master or court to determine.

(Objection overruled and exception taken.

Question withdrawn.)

A. I don't think so.

234 Q. You mentioned that there were two hundred meeting houses belonging to the church?

A. I mentioned that approximately; I couldn't state; I am very certain there are that many, but I couldn't tell exactly.

Q. Do you mean that the church in general owns two hundred meeting houses, or simply two hundred meeting houses devoted to the——

A. (Interrupting.) We have ecclesiastical ward organizations—distinct church organizations. The people of this city do not have any interest in the meeting houses of Ogden City, and vice versa; but there are under the control of the various ward organizations I should think that number of meeting houses.

Q. You mean to say that the different local organizations of the church own two hundred meeting houses?

A. Yes.

Q. But they are under the control of those local organizations?

A. Yes, sir; they are under the control of those local organizations.

Q. And maintained by them?

A. And maintained by them.

Q. How many meeting houses or churches does the church in general—I speak of the entire voluntary association—have?

A. Well, that would cover it.

Q. I mean independently of these local organizations?

A. There are no meeting houses owned outside of local organizations, excepting in this city.

Q. That is the assembly hall?

A. The assembly hall.

Q. On the temple block?

A. On the temple block.

Q. That is fully furnished and provided for, isn't it?

235 A. Yes; that is, we call that general. It is owned by the church in general—the church as a whole.

Q. And it is the only one?

A. Well, I don't recall any other instance; certainly not in this Territory.

Mr. VARIAN. I would like to ask a question or two.

Q. First as to the meeting-houses, Mr. Cannon. Were not many of these meeting-houses and the property on which they stood acquired by donation or taxation for school purposes?

A. Unfortunately, sir, we have built meeting-houses all over this country, and because of the inexperience of our people in relation to the school law. After the houses were erected in some instances they allowed a tax to be collected to repair them, or to make some addition to them and we have lost the property, and we have had to erect new ones in the place thereof; that is one reason why there is such a large amount needed of late and still needed to construct new buildings.

Q. Well, have there not been cases here in Salt Lake City where the property used for meeting-house purposes is ascertained to belong to the school districts?

A. Upon that principle, sir.

Q. Was there not one in the 14th ward where there had to be a settlement, and the money paid one way or the other?

A. Yes, sir; I will state a little in that. I was the original owner of the 14th ward lot; while I was absent, they took possession of it for school purposes, built a house on it; it stood in my name for years; the school trustees, after the law was passed, came to me and asked me
236 for warranty title. I declined to give them a warranty title. I told them it was bad enough to take my lot without having me warrant the title to them after it was done. They came to me afterwards with a quit claim deed, which I signed, and which I have always regretted I did sign, because it was intended to be church property. That is the history of the 14th ward lot.

Q. Well, did the church build a meeting-house on it?

A. Yes.

Q. And used it?

A. And used it; but they made an addition——

Q. (Interrupting.) For school purposes and church purposes for a number of years?

A. Yes, sir; for a number of years; and they made an addition to it through that title being in the trustees; the school district took possession of it and held the ownership.

Q. Have there not been a number of instances similar in nature to that here and in other places?

A. Yes, sir.

Q. Where it developed that the church and school property were united in that way?

A. Yes, sir.

Q. Now, if I understand you, Mr. Cannon, the fund that you have been speaking of as derived by the church from the people, excluding the funds raised by the relief societies and by the fast offerings, is the fund derived, as Mr. Rawlings suggested, by the law of tithes—it comes in that way, does it not?

A. Well, it has been called that, sir.

Q. Well, I don't rest upon a name; perhaps you understand
237 what I mean—the tenth.

A. We have for many years ceased using the term tithing because it was a misnomer.

Q. Well, it means the same thing.

A. It was really donations, because the tithe was not paid.

Q. Well, is that in accordance with the tenets and law of the church?

A. Which, sir?

Q. The requirement that all persons shall contribute in accordance with their means, within a limit?

A. Yes, sir.

Q. That is a law applicable to all members in good standing?

A. I think it is a little strong to call it a law; it has been a rule that has been observed among us.

Q. One of the tests of fellowship?

A. No, sir.

Q. Has it never been?

A. I wouldn't say that there have been instances—none to my knowledge, however, only by report—of cases where men have been questioned as to their fellowship who did not comply with that requirement, but it is not generally the case in the church that that is looked upon as necessary for fellowship.

Q. Conformance with it, however, is taught and encouraged and advised?

A. Conformity with it is recognized——

Q. (Interrupting.) And counseled by those in authority and the preachers?

A. Yes, sir; conformity with it is recognized as an evidence of good standing—a man being in full faith.

Q. Failure to conform with it for a considerable period of time so as to make it marked—would that have the effect of directing attention to the person so failing by the church authorities and also by his neighbors?

238 A. I should think myself, now—my personal knowledge I don't know of—in relation to any member, scarcely, in the church, whether he paid his tithing or not.

Q. Well, I am speaking generally, what your knowledge is as to what the general result would be?

A. If it were known that a man didn't pay tithing, as we call it—if he didn't make any donations to the church, and that were to continue for a long period, and it were to become known to his fellow members, he would be looked upon as weak in the faith.

Q. Well, would he or would he not be counseled with and advise' with in this matter?

A. It is possible.

Q. Publicly and privately?

A. It is possible that the teachers would talk with him about it.

Q. Is there any fixed sum, in the way of a minimum or maximum of a man's increase or annual earnings, which is to determine the question of his donation?

A. No, sir.

Q. That is, is it a tenth?

A. Not that I know of.

Q. Has it ever been so—a tenth?

A. I don't know of any such——

Q. Is it left to the individual's own sense of what is due the church?

A. Entirely.

Q. Does, or has the church in the past, supervised in any way through its officers or teachers these contributions from individual members, having in view their apparent means and their prosperity or otherwise in life?

A. My intimate familiarity with home affairs dates back to 1864;
239 prior to that time I was away on missions; since 1864 I know of no such practice in the church.

Q. Do you know of public discourses upon the subject?

A. Oh, yes.

Q. Addressed to the congregation or the people as a whole?

A. Yes.

Q. Which would be heard by them or published and carried into their homes?

A. Yes.

Q. The practice in that respe't has been quite uniform, hasn't it?

A. Oh, yes.

Q. To inculcate this, now, has the church any other source of revenue except from its people in the way you have indicated?

A. No.

Q. It depends, then, for all purposes of its financial support and prosperity, upon these contributions and tithes?

A. Yes; these voluntary donations, as we term them.

Q. And, as you have stated, this fund, so coming, is used for all purposes of the church?

A. All church purposes such as I have described—religious and charitable purposes.

Q. Well, if there was any other purpose, the church would have no other funds upon which to draw?

A. No.

Q. Then, has it in the past devoted this fund, of which this is a part—I am confining myself to this fund in controversy—solely to these religious and charitable purposes that you say, or have there been business purposes to which it has been devoted?

A. I don't recall any business purposes that they have devoted funds to; in order to have income there were means put in Z. C. M. I.,
240 as we call it—that is, Zion's Coöperative Mercantile Institution—and the income from them was used for the payment of hands and for other purposes; it went into the general fund, and was used as a part of the general fund.

Q. Has it been loaned to members of the church for the purpose of enabling them to get stock, in farming or agriculture, or anything of that kind, upon security, to be returned?

A. Only so far as I have alluded to; that is, to my knowledge; struggling settlements have received aid in building dams, in constructing canals, and purposes of that kind, to assist them in their straitened condition.

Q. Have those been donations or have they been loans?

A. Generally donations.

Q. So that the fund has contributed to those building purposes?
A. To the relief——
Q. (Interrupting) The prosperity of the country?
A. It has been for the relief of our coreligionists who are in those——
Q. (Interrupting.) Well, but that kind of relief, building dams?
A. Yes.
Q. Digging water ditches?
A. Not so much in making water ditches as constructing large canals.
Q. Well, canals for the purpose of opening up sections of country?
A. Yes, sir.
Q. Were those canals for the purpose of conveying water to different communities, as they start here and there in the country; is that what you mean?

241 A. Well, there is an occasion I have in mind now where a settlement—a dam washed out, and they had a new dam created or erected, and a new site selected for that purpose—and it was necessary to spend considerable means in making the canal that would draw the water from them, and the people were unable to meet the expense, and we assisted the'.

Q. It comes out of the church fund?
A. Yes, sir.
Q. And that is within the authority of the church authorities in the disposition of this fund?
A. Yes, sir.
Q. As it was originally acquired and accumulated from year to year. There has been a good deal of litigation and law matters in the last six or seven years. Have these funds in any way been disposed of in that expenses?
A. Before 1887 we had very little litigation, therefore we didn't expend means in that direction.
Q. Didn't expend any of this fund?
A. Well, I don't recall any.
Q. Prior to 1887—commencing with 1883, '4, '5, and '6?
A. I don't recall any.
Q. Did the church, as a church, with this fund take no part in the defense of cases, in the payment of counsel fees?
A. I served in Congress for ten years prior to 1882——
Q. (Interrupting.) No, after that, I mean.
A. And I never expended a dollar for the church in any form during that period, and I don't recall——
Q. (Interrupting.) Now, Mr. Cannon, from 1883 down to 1887 and perhaps later, were there not a large number of poor people be-

242 longing to the church who got into difficulty, unfortunately—legal difficulties with the courts?

A. Yes, sir.
Q. And did they not require assostance and didn't the church assist them—those who were unable to assist themselves?
A. I think likely they did.
Mr. DICKSON. Assist them in what way; by employing counsel and defending cases?
Mr. VARIAN. Yes, and paying fines, etc.; anything of th't kind.
A. No, sir.

Q. Costs?

A. No, sir; we didn't pay any fines.

Q. In what way did you assist them?

A. We assisted their families when they went to prison; we sustained their families in the mean time.

Q. How about when they went to trial, etc.

A. There were, I think, arrangements made for that.

Q. I refer to what has sometimes been termed the crusade against your people; in cases known as polygamous—plural-marriage cases?

A. Yes, sir.

Q. Under the Edmunds law?

A. Yes, sir.

Q. Are the cases that I refer to—people charged with offenses under those laws, where they could not protect themselves, the church protected them as well as it could through its funds in the way you have indicated?

A. In reply to that I have to say that a great deal of that was independent of any church fund.

Q. Yes, I understand it was; at least I infer it was only where it was absolutely necessary, by impoverishment.

243 A. Where it was absolutely necessary; the funds were not taken out of the general church funds; I have myself contributed liberally from my private funds for that.

Q. Do I understand you that the church fund did not contribute at all?

A. No, I wouldn't like to state it exactly that ; but I know a great deal of it—the greater portion of it I may say, was contributed by private individuals, and contributing aside from the church fund, for that special purpose.

Q. Now, the fact is, is it not, that the control of this fund is quite absolute with the first presidency and his counsellors; it was contributed with that understanding, reliance being placed upon their loyalty to the church, and judgment, and discretion. Is that it?

A. Yes; I may say, however, that whenever it was possible, that there has been anything of a serious nature occurred in the way of contribution or an appropriation, that we have availed ourselves always of the counsel of the twelve.

Q. Well, I call them all the leaders—the twelve and the first presidency. And this fund comes in the way of contributions from produce and products in kind, does it not?

A. A great deal of it.

Q. A man that has an animal and no money contributes the animal if he chooses to do so; if he has grain, or potatoes, or farm products, or money, he contributes in kind?

A. Yes, sir.

Q. And that is the way the fund has been accumulated, and you have maintained and do maintain now stations or gathering places in

244 different localities through the Territory for the purpose of receiving these contributions from the people?

A. Yes.

Q. Now, prior and during the time when this legislation that I speak of was enacted, did the church as a church, through its authorities, oppose that legislation in the way of getting up evidence and reports, statements, witnesses, and such like?

Mr. DICKSON. Oppose what, Mr. Varian?

Mr. VARIAN. Oppose the enactment of this legislation that I have spoken of, and employ counsel, before the statutes were enacted and during the time they were enacted. Was there not opposition of that kind presented?

A. There was, by our Delegate to Congress.

Q. Did the church authorities expend any of these funds in that way?

A. No, sir; we aided him all we could.

Q. In presenting evidence and in employing counsel to present the cases before the committees, etc., were there not expenses of that kind that church authorities made out of this general fund?

A. I don't recall an instance where we employed counsel at that time. We had cases that were before the Supreme Court, that involved serious questions, that we did; but to employ counsel in the manner in which you indicate——

Q. (Interrupting.) To appear before committees and such like?

A. I have no recollection of any such thing.

Q. Were Shellabarger & Wilson counsel for the church in these cases in Washington?

A. They were counsel for the church in some cases before the Supreme Court.

245 Q. Mr. Chandler and Mr. Gibson?

A. Mr. Gibson, I believe, was employed, but Mr. Chandler, I don't think ever was.

Q. Didn't those gentlemen appear for the church before the several committees in Congress, upon various occasions, and deliver arguments and examine witnesses?

A. I don't think before 1887 that they did; I don't recall that they did appear before that; Chandler was engaged by two Territorial officers, the auditor and the treasurer—Jeff. Chandler, but I don't think he ever ——

Q. (Interrupting.) That was in the Territorial office cases?

A. Yes; but I don't think Jeff. Chandler ever appeared for us in any form.

Q. Then, as I understand it, none of these attorneys, nor other persons, if any, who represented the Mormon people or the church before Congress, received any compensation out of the church funds.

A. If they were regular attorneys, they were either paid by the church or by the members of the church; they did not work gratuitously.

Q. Th't is wh't I want to get at, Mr. Cannon; might they have been paid from the church fu'd—could your authorities have done that very properly?

A. Oh, I pres'me they could.

Q. It would have *neen* lawful?

A. It would have been without the perview of their authority.

Q. They might have *neen* paid in that way?

246 A. Yes; there is this that ought to be stated in connection with this question, that a great many of us—a great many members of the church—went down there voluntarily at their own expense when cases of that kind arose; I, myself, have gone to Washington and never received any fee for anything of the kind, and a great many others did; but where

there would be council of course—I don't recall their appearing before 1887, but I was not at Washington, I was away from the Territory, or 'rom the city at that time.

Q. Do you remember when Sen. McDonald and Jud'e Broadhead appeared here and at Washington, in this very case?

A. Yes, sir.

Q. Was their employment by the church or by private individuals?

A. It was by the church.

Q. And that was within the purview of the authority?

A. Yes, sir.

Q. No question about that?

A. That was the church, of course, defending its rights and employing counsel for that purpose.

Q. Did I understand you to say to Mr. Rawlins that there was no portion of the general fund of the church devoted to the dessimination of literature?

A. I wont say that there was no portion of it.

Q. I didn't know whether I understood you?

A. A very small amount of it; much less than I thought ought to have been.

Q. Was there any special fund devoted to that purpose?

A. No, sir.

247 Q. The issue of books and dessimination of——

A. (Interrupting.) No, sir; there is none; never has been.

Q. But during this time, while this legislation was pending—prospective—was there no portion of the fund expended in that way, getting up literature?

A. No, sir.

Q. For the inspection of Congress and the country?

A. There were contributions made very freely by members of the church, who were in funds, to all these purposes, and they didn't come out of the general church fund; at the time, you know, that this property seized there was a great deal of feeling on the subject, and the time that you mention, when the attacks were made under the law of 1887, there was a great deal of feeling, that is, the people were excited and willing to contributed liberally to defend.

Q. Yes, but before that—commencing with 1881 and 1882, when the other law was about——

A. (Interrupting.) Well, sir, as I happened to be in Congress in 1881 and 1882, I can state emphatically there was not a dollar spent.

Q. Was there any of it spent by the authorities in the way of keeping up newspapers, aiding the church principles, or otherwise?

A. No, sir.

Q. But the result of it is that whatever purpose was deemed by the church authorities necessary for the church, the moneys may be expended for that purpose, and it is within the scope of their authority?

A. Yes.

248 Q. The people give it to them for that purpose, to be dealt with in that way as they see fit?

A. We have always, though——

Q. (Interrupting.) Is there any setting apart of any particular portion of this general fund for any particular purpose?

A. No, sir.

Q. It is all under the control of the officers you have named?

A. Yes, sir.

Q. Then, there is no means provided for producing a dissemination of church literature?

A. No, sir; none whatever.

Q. Books and pamphlets?

A. None whatever.

Q. Depend upon the sales for compensation?

A. Yes, sir; we have been exceedingly scrupulous in regard to these other question', which you asked me; we have been exceedingly scrupulous about using means; I have been applied to while I was member of Congress, I suppose hundreds of times, to avert legislation by contributing, by spending means, and we have never done that; while I was in Congress we never spent a dollar.

Q. I am only ask'ng about the spending of means in a legitimate way—getting up statements, tabulated and otherwise, and procuring them before the authorit*i*s, and employing counsel; that was the only thing that I was asking you about, with a view to ascertain how far your authority went in the d'sposition of these funds.

A. We could have done that, but as I said in the beginning of this, what you are pleased to term the crusade, there was a fund created
249 by direct contribution outside of the church funds, and we have been talked to—there has been mentioned a number of times unfavorably to us, because we called it a defence fund; and from that fund by private contribution a great many of these expenses—the most of them—have been paid.

Q. Aided, you say, though, at times by the church fund?

Mr. RICHARDS. He didn't say that.

The WITNESS. No, sir; I didn't say that.

Q. Didn't you say, Mr. Cannon, that in some cases the c'urch au*rht*orities did assist in these?

A. We have assisted a great many of these people, you know, at different times.

Q. Assisted in their defence?

A. But not outside of that fund, except for the support of their families, etc.

Q. Outside of their special defence fund?

A. The special defence fund.

Mr. RICHARDS. Except in the case of Broadhead and McDonald; he said that had come out of this fund.

The WITNESS. Bro'dh*a*ed and McDonald were employed for the defence of the corporation.

Mr. VARIAN. But if you have expended it in that way it would have been within the purpose of the original contributions, as I understand it. You had the discretion?

A. Yes, sir; but we should have hesitated about using it.

Q. Yes, that is a matter of application?

A. Yes.

250 Redirect examination of George Q. Cannon by Mr. RICHARDS:

Q. I understand, then, Mr. Cannon, that this defence fund that you speak of was a separate and distinct fund entirely from this fund that is now in the hands of the receiver?

A. Entirely so.

Q. There was no connection whatever between them?

A. None whatever.

Q. And all of these court expenses and expenses that have been spoken of by counsel in the cross-examination have been defrayed, if by the church at all, out of that special fund?

A. The lawyer's fees, all the counsel that we have been employing, have been paid out of that defence fund.

Mr. VARIAN:

Q. Except the other two you mentioned?

A. Except those two.

Mr. RICHARDS:

Q. Except McDonald and Broadhead?

A. Yes, sir; I confine my reply to this crusade, because it was then that the defence fund was necessary.

Q. Well, I want to know whether it relates to this whole question upon which you have been engaged, going clear back beyond 1882?

A. That is it.

Q. As to any efforts that have been made to defeat Congressional legislation, or to contest the validity or constitutionality of the laws, or to defend the members of the church for the violation of any act of

251 Congress. Now I understand that in all those instances wherever the church has assisted any of its members, or has done any of this work, that it has been done out of the special-defence fund, and not out of this fund; is that correct?

A. Yes, sir; President Taylor was exceedingly scrupulous as trustee in trust concerning his powers. We differed with him, so his counsellors did, concerning schools. He did not consider that he had authority to appropriate funds for school purposes; he was a strict constructionist as to his powers as trustee, and therefore, when a necessity arose for the expenditure of the funds for the defence of the people, he said emphatically it must come from something else beside the fund—some other source than the fund which he was trustee in trust for—and consequently this defence fund was created.

Q. That was created for that express purpose?

A. That was created for that expressed purpose.

Q. Then, as a matter of fact, no part of this fund has ever been applied to any such purpose?

A. Not to my knowledge and I would have known it.

Q. Could it have been done without your knowing it?

A. No, it could not, because I was consulted all the time.

Q. You stated when asked about your authority to dispose of this property—that is, the authority of the first presidency to dispose of this property as it saw fit—do you mean that you were at liberty to make such

disposition of it as you saw fit without any regard to the purposes
252 of such disposition, as you saw fit, so long as it was devoted to religious and charitable purposes?

A. So long as it was devoted to religious and charitable purposes.

Q. You mean, then, with those limitations?

A. Yes. I wish to state, now my attention is called to this matter, that President Taylor was exceedingly scrupulous about these matters; we differed, some of us, from him, as to his jurisdiction; he repeatedly said, "If I were called upon by the church to answer for my trusteeship, I want to be able to explain everything and to defend everything that I do in this matter." And on that account he refused to do with the church property what many of us thought ought to have been done with it, because he felt it was outside of his province as trustee in trust; we might have saved probably a good deal of property if he had taken a different view on that question from that.

Q. Now, I want to ask you again, Mr. Cannon; you refer to the appropriation of money for the reconstruction of a dam that had been washed out in a certain place, as an illustration of what you meant by appropriating money under such circumstances. Now, what would have been the result if that dam had not been replaced to the community?

A. The people would have starved to death or would have been compelled to abandon their homes.

Q. Now, when appropriations were made from time to time for such purposes, state whether or not it was under similar emergencies?

253 A. Nothing but the most extraordinary emergency would call forth the appropriation, for the reasons that I have stated, that we felt that there were certain limits that we couldn't pass properly—that the trustee could not pass, and of course, since his death the same feelings have governed us in the appropriation of means.

Q. Now, in regard to these meeting-houses, you say there is a meeting-house under the control of the local authorities of every ward. Is it not so also in each county, that they are generally——

A. (Interrupting.) There is a stake organization, also.

Q. And there are meeting-houses that are under the control of the stake authorities in each county?

A. The general meeting-house—to illustrate, take Provo. It has a large meeting-house there that belongs to the stake organization, and is owned——

Q. Of Utah County?

A. Of Utah County, and is owned by the members of the church generally in that stake.

Q. Now, while these meeting-houses are under the direction of the local authorities, state whether or not it is a fact that you are called upon frequently for means with which to enlarge or repair or maintain these places, or help to build new houses?

A. Frequently; we have frequent calls of that character.

Q. When such requests are made upon you, in what way do you respond?

A. By appropriating; if we deem the call one that we should
254 respond to, we appropriate such as they ask, or such a portion of it as we deem proper.

Q. Does that come out of the general fund?

A. That comes out of the general fund.

Q. Contributions made by the church?

A. I may say that the calls for this have been more frequent within the past few years, because of the school trustees taking possession of meeting-houses that had been erected principally by the members of the church.

Q. You spoke of President Brigham Young, the former trustee in trust of the church, having been indebted to the church and turning over gas stock and the theater, etc.; how did he come to be indebted to the church?

Mr. VARIAN. I don't think that is material.

Mr. RICHARDS. I will put the question in another form.

Q. I want to ask you whether or not it was the practice during the lifetime and administration of Brigham Young, while he was president and trustee in trust of the church, when there was a surplus of contributions, more than was necessary for the use of the church, to invest that in some method by which it would bring in an income, and if it wa' not in consequence of such investments from the contributions received from the members the church that he was indebted?

Mr. RAWLINS. You mean you offer that for the purpose of showing that he converted these funds to his own use?

Mr. DICKSON. No; but to show this, that where there was a surplus that was not required for the immediate demands of the church
255 for the relief of the poor, in order that it might not lie idle, it was invested in stock or some other way so as to make it productive; that is all.

Mr. VARIAN. We object to it as immaterial and irrelevant.

(Objection overruled.)

A. It was undoubtedly so, and that is the view that his executors took of it.

Q. Then, as I understand you, the theater was taken from him as being the result of the proceeds of these contributions of the church?

A. Yes.

Q. And the same way with the gas stock?

A. Yes.

Q. And the same way with the other property that was received from his estate?

A. Yes.

Q. Well, I will ask you whether it has not been the practice all the time, that when there was a surplus of funds on hand, that the first presidency would invest it in some manner that would make it productive and bring in an income?

A. Yes, sir.

Q. And then that income would be appropriated to the charitable and religious purposes of the church, would it?

A. Yes, sir.

Q. Now, Mr. Cannon, you spoke about some means having been 'p'*ao*priated to the poor Indians; will you explain in what way these appropriations have been made?

A. We*l* found a settlement of Indians who desired to dissolve their tribal relations, at a place which we called Washakee, in Boxelder

County, and employed teachers, farmers, blacksmiths, carpenters,
256 and other mechanics to labor with them to teach them industry and industrial arts; we have a school there where the Indian children are taught the English language, and we have a sawmill there, and employed competent men to teach the Indians *to* the art of sawing lumber; we have had blacksmiths, as I say, and carpenters, to teach them how to use blacksmith's and carpenter's tools, and to build themselves houses. We have agriculturists there to teach them agriculture, and 'ave machinery that we bought and furnished them that they may know how to use those implements themselves.

Q. And that is the way in which contributions were used?

A. They have been assisted in that way. We have also a settlement in Thistle Valley that is sustained in a similar manner. We have had a settlement in Deep Creek, but the Indians have scattered from there since. And we have pursued this policy for very many years in the Territory on the principle that it was cheaper to feed these Indians than to fight them, and to try and civilize them. We have extended aid to Tabby and his band—a chief in the Uintah Reservation—and they never visit our settlements without receiving contributions from us in flour, beans, and such such articles as they need to supply their wants, or what they claim are their wants; and this comes out, and has always, out of this church fund. We have felt as though it was our duty to try and civilize these people.

For many years before we had title to our lands — we didn't
257 have title to our lands until 1865——

Q. 1869?

A. 1869, was it? Until we had title to our lands we felt as though we were under obligations to do for these Indians all that we could.

Recross-examination of George Q. Cannon by Mr. RAWLINS:

Q. You stated in answer to Mr. Richards, thant when there was a surplus that was not needed here for the uses of the church, in the days of Brigham Young, when he was president of the church, it was customary for such surplus toe be invested in order that it might accumulate. Do you mean by that to say that as to the theater that the church funds were converted by Brigham Young into the theater?

A. I was not home when the theater was built, but when the settlement came with the executors——

Q. (Interrupting). You don't know as to the fact as to the means which wer' used in the theater, whether it was Brigham Young's private means or church funds?

A. Well, I do know that there was a great deal of it church funds.

Q. It was acquired and held by Brigham Young in his own name, was it?

A. Yes, sir.

Q. And he died, leaving the tiele in his estate?

A. Yes, sir.

258 Q. And on account of this use of church funds, and other use of church funds invested in property, the tiele to which was held in him, the claim was presented by the church against his estate for his executors?

A. Yes.

Q. Which was settled by turning over various pieces of property, including the theater?

A. The church authorities gave us a list of property that they 'laimed, submitted that list to us as executors, claiming it as church property, and trustee property, and we, after examining it, turned over that property to the church from the estate.

Q. But all this property was at the time held——

A. (Interrupting). Held by him.

Q. In his individual name; that was settled, as I understand it; the church made a claim for a gross sum of money against the estate, and that claim was settled by turning over various pieces of property?

A. No.

Q. And a credit allowed to him on account of services, was it not?

A. No; the church did not claim a sum of money; they claimed certain properties which amounted to a certain sum of money; they claimed certain properties, and gave that list to us as executors, as their demand.

Q. But all that claim was not allowed, was it; there was a deduction made from it?

A. Well, I think it was all allowed; of course there was something allowed to him for services; that formed part of the list.

259 Redirect examination of George Q. Cannon, by Mr. RICHARDS:

Q. The claim of the church, as I understand you, Mr. Cannon, was that President Young was holding this property on a secret trust for the church?

A. Yes; that is the understanding.

Q. And you, as the executors, acknowledged that and turned the property over to the church, as having been held in trust?

A. Yes.

Q. Ha'e you any means of refreshing your recollection or ascertaining as to the number of persons who are dependent upon the church for support?

A. I understand there are a little over six thousand; between six thousand and sixty-five hundred.

Q. There are that many person' now?

A. Yes; at the present time.

Q. Receiving support?

A. The last schedule, I understand, as I remember it and as I am informed, contained the names, or at least represented, that there were six thousand——

Mr. RAWLINS. If there is such a statement made, of course, that would be the best evidence.

Mr. RICHARDS. We will ask to have that last answer stricken out.

Mr. MARSHALL. We move to strike out the whole answer, that there are six thousand or sixty-five hundred.

260 Mr. RICHARDS. Well, let it all be stricken out and we will examine him again, because his information don't come that way at at all; he has got it mixed.

The MASTER. Let it all be stricken out then.

Q. Now, I will ask you, Mr. Cannon, if you know how many people are receiving support from the church?

A. I don't know; not at present; I can find out, but I don't know.

Q. Just find out.

Mr. VARIAN. If there is any schedule bring it up.

Mr. DICKSON. Yes; if you have any evidence of it bring it.

The WITNESS. Yes; I can find that out, probably; as I explained, there are a great many who write letters to us, making applications to us, that would not be in any tabulated form.

261 WILFORD WOODRUFF, being duly sworn as a witness in behalf of the defendants, testified as follows:

Direct examination by Mr. RICHARDS:

Q. President Woodruff, what is your age?

A. I was 84 the first day of last March.

Q. Where were you born?

A. Born in Farmington, Connecticut.

Q. Where do you reside?

A. Reside in Salt Lake County, Utah Territory.

Q. How long have you resided in this Territory?

A. Ever since 1847; I came into the Valley with the pioneers on the 24th of July of that year.

Q. What official position, if any, do you occupy in the Church of Jesus Christ of Latter-Day Saints?

A. I am the president of that church.

Q. How long have you held that position?

A. Since April, 1889.

Q. What position did you hold in the church prior to April, 1889?

A. I have been a member of the quorum of the 12 apostles ever since 1839; I have presided over the 12 apostles from the time that President Taylor was elected president of the church, which was I think in 1880.

Q. (Showing paper, Exhibit A. to witness). Just examine that paper, please. Do you recognize that paper?

A. Yes, sir.

Q. What is it?

262 A. It is a manifesto which I issued as presid'nt of the church on the 25th day of September, 1890.

Mr. RICHARDS. This is Exhibit A, if your honor please, to the proposed scheme.

Q. What was your object and purpose in issuing the manifesto?

A. It was to announce to the world that the plural marriage had been forbidden by the church and that it could not be practised thereafter.

Q. State whether or not the manifesto was ever presented to the members of the church for their approval.

A. It was presented to the quorum of the 12 apostles and accepted by them. It was afterwards presented to the officers and members of the church assembled at the 61st semiannual conference on the 6th day of October, 1890.

Q. April?

A. September—October, I meant to have said.

Q. 6th day of October, 1890?

A. Yes, sir; my memory does not always catch all those dates.

Q. What action, if any, was taken by the conference of the church in relation to the manifesto?

A. The conference received and adopted it by a universal vote.

Q. How many officers and members of the church were present on that occasion?

A. About ten thousand, and we had a fair representation—a large representation of both officers and members from the whole Territory, from the various stakes and branches, and from other places.

263 Q. State whether or not you have ever heard any opposition to the manifesto or any dissent from it by any members of the church?

A. I have not.

Q. State whether or not, to the best of your knowledge, the members of the church willingly accepted and adopted it?

A. They have, as far as I know.

Q. State whether or not it would be contrary to the law of the church for any member of the church to enter into or contract a plural marriage?

A. It would be contra'y to the laws of the church.

Q. What would be the penalty?

A. Any person entering into plural marriage after that date would be liable to become excommunicated from the church.

Q. State whether or not, to your knowledge, since the date of the manifesto, there has been any polygamous or plural marriage entered into or contrac'ed by any member of the church?

A. There has not, to my knowledge.

Q. Have you in any manner since that date advised, encouraged, or assented to the practice of bigamy, polygamy, or plural marriage by any members of the church?

A. I have not.

Q. Do you know of any other officer of the church that has advised, encouraged, or assented to the practice?

A. I do not.

Q. State whether or not you have any hope or expectation that the practice of polygamy or plural marriage will ever be reëstablished in the future?

A. I have not.

264 Cross-examination of Wilford Woodruff by Mr. VARIAN:

Q. Mr. Woodruff, is this Exhibit A, annexed to this paper, the original manifesto or announcement by you, or isn't this one that was made subsequently, in answer to statements appearing in the telegraphic dispatches and press of the country?

A. I never made but one that I recollect.

Q. Did you understand by this declaration of tenet or principle of faith of the church over which you presided was changed in any degree?

A. No, sir; I don't know that I did. With regard to the principle of——

Q. (Interrupting.) Does your church derive its principles of faith and rules of conduct from the Bible, the Book of Mormon, of doctrines, and covenants, and the revelations of Almighty God?

A. Yes, sir.

Q. Was the principle of plural or celestial marriage derived through a revelation?

A. Yes, sir; the principle that has been adopted by the church was.

Q. Had there been any principle of faith or tenet of your church ever incorporated in its creed through the vote of the members?

A. No, sir; I think not.

Q. Has it not always——

A. (Interrupting.) Any further, I will say, of course the prin-
265 ciple of faith of the church has been presented to the church and voted upon by them as a reception—to receive those principles have been by vote.

Q. Has any principle or tenet having its foundation in revelation been submitted to the membership of the church, with a view to their accepting or rejecting it, by vote?

A. Yes, sir; I think all revelations that we have received have been accepted by vote.

Q. Has there ever been an instance of one being rejected?

A. Not as a general principle.

Q. Well, has there ever been an instance of it being rejected at all where it purported to come through proper channels from the higher power?

A. No, sir.

Q. Is not the principle of plural marriage still a tenet of the faith of your church?

A. Yes; I believe the church believes in the principle.

Q. Would it not have to be changed by the same power and authority from which it is derived as a principle?

A. Yes, sir. I would remark that a principle may be believed in by the church—a true principle—and still not be practised.

Q. You don't understand, then, that the people of your church indicated, by accepting your declaration, that their views or beliefs upon the principle involved were at all changed, but only that they were willing to follow your advice in submitting to the conditions that confronted them?

A. Yes, sir; I view that to be about the ground.

266 Q. Did you state more or intend to convey more in this declaration than the fact that you yourself intended to submit to the law referred to, and to use your influence with the members of your church to have them do likewise?

A. Well, in that declaration, of course, I expected to obey the laws of the land, and request that the Latter-Day Saints do the same, and to carry out that principle in obeying the law, whether it was all stated or not; that was the ground.

Q. Does this declaration anywhere indicate to your people that a failure to follow your advice would become a subject of church discipline?

A. Well, it would become so whether it is stated or not.

Q. But does it so state here, Mr. President?

A. I don't know that I can say that it does.

Q. Did you intend to confine this declaration solely to the forming of new relations by entering into new marriages?

A. I don't know that I understand the question.

Q. Did you intend to confine your declaration and advice to the church solely to the question of forming new marrriage' without reference to those that were existing—plural marriages?

A. The intention of the proclamation was to obey the law myself—all the laws of the land, on that subject, and expecting that the church would do the same.

Q. You mean to include, then, in your general statement the laws forbidding association in plural marriage, as well as the forming of new marriages?

267 A. Whatever there is in the law with regard that—the law of the land.

Q. Let me read the language, and you will understand me perhaps better: "Inasmuch as laws have been enacted by Congress forbidding plural marriages, I hereby declare," etc. Did you intend by that general statement of intention to make the application to existing conditions where the plural marriages already existed?

A. Yes, sir.

Q. As to living in the state of plural marriage?

A. Yes, sir; that is, to the obeying of the law.

Q. In the concluding portion of your statement you say: "I now publicly declare that my advice to the Latter-Day Saints is to refrain from contracting any marriage forbidden by the law of the land." Do you understand that that language was too be expanded and to include the further statement of living or associating in plural marriage by those already in the status?

A. Yes, sir; I intended the proclamation to cover the ground to keep the laws—to obey the law myself—and expected the people to obey the law.

Q. Well, what law?

A. The laws of the land.

Q. The law against contracting marriage, which is the one you refer to?

A. Yes, sir; contracting marriage, marriage, or breaking the law appertaining to polygamy, plural marriage.

Q. Was the sole reason of this declaration because of those laws that you speak of?

A. Well, if I might make an explanation——

268 Q. Certainly.

A. Of this matter I would say this: There was no law against this principle, no law against polygamy or the patria'chal order of marriage that was practiced by the Latter-Day Saints, until 1862. The members of this church did not believe that law was constitutional, and I myself hardly believed ——. I do hardly think there were but very few outside of the church who were judges, lawyers versed in the law and Constitution of the country, who believed themselves that that was a constitutional law, and of course that law remained upon the statute books a de'd letter for many years; I don't know how many, and one of our own people—an elder of this church—came forward and furnished testimony himself, as a test case; that was Mr. Reynolds, he believing that he would be dealt leniently with, and until that was proved or represented to be a constitutional law there was nothing against the practice; after that there was; of course it is known publicly—there were a thousand or probably more—I might say, perhaps, the leading men of the church, who went to prison rather than desert their families, and to prove, of course, their faith and their feelings with regard to their position that they occupied. And after

doing this, of course this was the position we were in. There were but few of this church who had entered into polygamy—a very small percentage—probably five per cent of the people would cover the whole ground, and here was ninety-five per cent of the community who occupied this position with those who had what was called criminal (they were innocent),
269 were in a position apparently that they would all suffer; the public sentiment of the whole nation as well as the laws apparently were against it, and I will say for myself, I became thoroughly convinced that this subject would have to be changed. After I was appointed president of the church I looked this question over, and I for a good while was satisfied in my own mind that this subject would have to be changed; that plural marriage would have to be stopped in this church altogether. It was not ourselves who were suffering, but a large portion of the people who had not entered into it, and this principle was upon my mind and I took no steps after I was made president of the church. I did not advocate the principle, and this principle was among our people, for that was what I saw before me, and it was upon that ground that I issued that manifesto, by—I will say as I viewed it—by inspiration; I believed it was my duty; I believed it was the duty of our people to obey that law, and to leave events in the hands of God. Now, if the gentleman can understand my views upon it, there is where I stand.

Q. Well, was the action predicated upon the fact of this condition of affairs arising out of this legislation and the enforcement of the law?

A. Well, of course, as I said before, that had its influence of course; it was upon that ground that the subject was made manifest and what was before us.

Q. Was the manifesto intended to apply to the church everywhere?

A. Yes, sir.

270 Q. In every nation and every country?

A. Yes, sir; as far as I had a knowledge in the matter.

Q. In places outside of the United States as well as w'thin the United States?

A. Yes, sir; we are given no liberties for entering into that anywhere—entering into that principle.

Q. But I don't understand you as saying that a failure to follow the advice herein contained would result in authorized church discipline?

A. No; it might not have been stated there; still that would be the——

Q. (Interrupting.) Could it be so followed?

A. Yes, sir; it would; *it would;* any man entering into that principle without—it would be the same as be*of*'re the law was revealed; any person entering into the principle of plurality of wives, taking an addition to his family, would place him liable to be turned from the church—excommunicated from the church.

Q. Do you understand, then, that the original law, as it appears in your books of authority is revoked—changed—finally disposed of by this declaration?

A. I have nothing to say particularly upon that subject; of course, it covers the ground of our acts and the acts of the people—our lives.

Q. Would it not of necessity require a declaration from as high a source as that from which the original law came to revoke or change that law governing the principle of plural marriages?

A. Yes, sir; I suppose it would.

271 Q. Are you willing to say, Mr. Woodruff, that you now consider, by reason of this act of yours and your people, in conference assembled, that the principle of plural marriage was originally given and subsequently followed and practised by your people, is no longer the law of the church or of God?

A. I have nothing to say with regard to the law of God particularly; as I have said, it is against the law of the church—the law of God to us. We are required to abandon that law, that doctrine or tenet of our faith in our practise.

Redirect examination of Wilford Woodruff by Mr. DICKSON:

Q. President Woodruff, in the event of this Territory being admitted into the Union, would you, as the president of the church, under such circumstanc's—I mean if the Territory came into the Union so that there was no longer any fear of punishment under the civil law of parties who might enter into plural marriage—would you, under those conditions, as president of the church, advise, encourage, or countenance its practice?

Mr. MARSHALL. We object; so far as this controversy is concerned, it is irrelevant and immaterial.

272 Mr. DICKSON. I desire to show, if I can, by the answer of this and other witnesses that they have no hope, or belief, or expectation of returning to the practice of this principle under any conceivable conditions.

The MASTER. That is what he said in the first instance.

Mr. RICHARDS:

Q. President Woodruff, do you believe that the principle of celestial or plural marriage was revealed to the church through Joseph Smith, from the Almighty?

A. I do.

Q. Do you believe that the Almighty has revealed to the church through you, that this is *the* discontinued and abandoned?

A. I do.

Q. You believe that?

A. Yes, sir.

Recross-examination of Wilford Woodruff by Mr. VARIAN:

Q. Now, Mr. Woodruff, if that is the case, why did you not declare this to your church as a revelation, instead of by way of your personal advice and counsel?

A. Well, men differ with regard to the principle of revelation in that respect. My view is that inspiration is revelation. It is from the same source. A man is not always required to say, I think, "Thus saith the Lord," on counselling on matters that he gives.

Q. Did you indicate, or did you intend to indicate in any way, to your membership that what you said in this particular was a revelation

273 changing the divine law, as it had stood with you for years?

A. I intended to give, as I said there, with regard to stopping the practice of the patriarchal marriage in the Church. Words may not have been used, and there may not have been as many words used perhaps in the matter as some might suppose ought to have been, but what I said to the people, what I said to our church I said by inspiration as I view it, and by the divine will of the Lord.

Q. Did you intend to convey to them, as a fact, that it was a revelation changing the religious law in relation to plural marriages?

A. I intended to give them to understand that we should stop the practice of that l'w; that was the object.

Q. Because of the misery and trouble arising from its practice, owing to these laws against it; wasn't that it?

A. Well, yes; it was that, of course, in connection with involving the affliction of hundreds and thousands of people that were not in the same position, that had not obeyed the same law with us. I considered myself that it was involving thousands and many thousands of people, that were not accounted as guilty; it might be said, of the same things that we were accounted so by the law, or by the nation.

Q. Isn't it true that your people received it in that sense and that alone, and, as you stated before, that the faith in the truth of the principle, as a divine one, has not departed at all?

274 A. Well, I will say this: I am satisfied myself the Lord requires and has required in many times His people to perform a work which they could not perform; where they undertook to perform a certain work, under certain circumstances, they were hind'red from it, and they were no longer r'quired to do that work; it is upon that ground—if I can be understood, that I view the position that we are in to-day, as to our denying what is in the Bible, or what has been given in those revelations or our disbelieving that as a principle, I do not think we do—I do not. I believe that principle has been the principle from ancient ages of course, and it has been the principle revealed to us, but it is our duty to lay that aside.

Q. I understand you perfectly, but I am getting at this other matter. Isn't it true that you understand that your people believe just as you do about it, that it is a submission to the law on your part, and not at all a change in the tenet of your faith?

A. Probably.

Q. Isn't that the true state of the case?

A. Yes; I think that is the case.

Q. And that a true principle does not change?

A. No, sir; I don't think it does.

Q. And never will change?

A. No.

Q. And this is a true principle, as you people believe?

A. Yes, sir; as we believe.

275 Redirect examination of Wilford Woodruff by Mr. RICHARDS:

Q. President Woodruff, at the time this manifesto was presented to the conference, on the 6th of October, 1890, state whether or not it was there stated by President George Q. Cannon, and perhaps other officials in the church, that you had been inspired from the Lord to issue this manifesto, and that it was the expression of the will of God to the people.

A. Yes, sir; he stated that.

Q. Well, state whether or not you have not since, in the public congregations of the people, stated that or in effect that.

A. Yes, sir; that is true.

Q. That you had been inspired to issue the manifesto, and that it was the will of God that you should?

A. Yes.

Mr. DICKSON:

Q. Your attention was called to the fact that nothing is said in this manifesto about the dissolution of the existing polygamous relations. I want to ask you, President Woodruff, whether, in your advice to the church officials and the people of the church, you have advised them that your intention was, and that the requirement of the church was, that the polygamous relations already formed before that should not be continued; that is, there should be no association with plural wives; in other words, that unlawful cohabitation, as it is named and spoken of, should also stop, as well as future polygamous marriages?

A. Yes, sir; that has been the intention.

276 Q. And that has been your views and explanation of it?

A. Yes, sir; that has been my view.

Thereupon a*d*n adjournment was taken until to-morrow morning at 10 o'clock.

277 TUESDAY A. M., *October* 20, 1891.

GEORGE Q. CANNON, being recalled by the defendants, testified as follows:

Direct examination by Mr. RICHARDS:

Q. Are you prepared now to tell, Mr. Cannon, how many persons are drawing support from the church?

A. I am.

Q. What is the total number?

A. (Referring to paper.) 6,818.

Q. State whether or not these people draw their entire support or only partial support from the church.

A. The great bulk of them only draw partial support from the church; some small amounts, varying according to their necessities.

Q. It being the object of the church, I suppose, to supply only that which is necessary to supply their own disabilities?

A. Certainly; that is it; to keep them from actual suffering.

Q. Are there any who receive their entire support from the church?

A. There are widows and persons who are unable t*u* sustain themselves, blind people and others.

Q. Those who are entirely indigent?

A. Those who are entirely indigent and have no means of support; they receive their entire support.

Q. What amount was appropriated from the general fund during the past six months to support these people?

A. $30,029.

278 Mr. DICKSON. Six months ending when?

A. I mean last December.

Mr. RICHARDS:

Q. December, 1890?

A. 1890, yes; no, this is the amount required; I see from the general fund, for the six months closing June 25th, 1891, that is the amount required; that is the six months' requirement.

A. Are these appropriations made in advance?

A. Made in advance; yes, sir.

Q. Every six months in advance?

A. Yes.

Q. State as nearly as you can what is the entire membership of the church in the Territory of Utah and surrounding States and Territories.

A. Upwards of two hundred thousand.

Q. (Showing witness Exhibit A to defendants' scheme), do you recognize that paper?

A. Yes, sir.

Q. What is it?

A. It is a copy of the manifesto that was issued last fall.

Q. By whom?

A. By President Wilford Woodruff.

Q. Do you remember the date that it was issued?

A. It was in—I think, if I remember right, the 25th of September, 1890.

Q. State whether or not this manifesto met with your approval and endorsement.

A. It did; my entire approval.

Q. Were you present at the conference of the church held on the 6th of October, 1890, when this manifesto was presented?

A. I was present.

Q. State what action, if any, the church took in relation to the manifesto.

A. It was adopted by the entire conference.

279 Q. Was there any dissent?

A. Not any.

Q. About how many of the officers and members of the church were present on that occasion?

A. Well, I would think that there were ten thousand, and may have been twelve thousand; the house was very much crowded, and the seating capacity was estimated, I believe, at ten thousand; there was fully that and probably more.

Q. State whether or not the different branches of the church in this Territory and elsewhere were represented.

A. There was very full representation there from all the stakes, as we term them.

Q. Have you ever heard any dissent or disapproval to that manifesto from any member of the church?

A. I have never heard of any dissent from any one.

Q. State what you understand to be the object and purpose of the manifesto, and the intention of President Woodruff in issuing it.

Mr. VARIAN. I suppose President Woodruff will speak as to his own intent.

Mr. DICKSON. As to what he understands his intent to ha'e been?

A. It was that the world should know that the practice of plural marriage had ceased, and also that the me'b'rs of the church should know that it was forbidden.

Q. State whether or not you believe that manifesto was given by inspiration from God to President Woodruff.

A. I believed it then, and have always, and am still of that opinion that he was inspired to issue it.

280 Q. Did you state that to the conference when this manifesto w's presented *that*?

A. I madw *a*uch a statement.

Q. Has that statement been made by you and other persons of high authority in the church, before the public assemblies of the saints since then?

A. It has been, wh'never alluded to in that way, it has always been stated that it was the inspiration of the Lord.

Q. Do you believe.that it would be pleasing or displeasing in the sight of the Al/mighty for any member of the church to enter into plural marriage?

A. I think it would be displeasing in the sight of the Lord.

Q. State whether or not it would be a violation of the law of the church for any of the members of the church to contract a plural or polygamous marriage?

A. It would be a violation of church rules.

Q. What would be the penalty?

A. The person would be in danger of being dealt with and severed from the church.

Q. State whether or not to you' knowledge, since the issua'ce of the manifesto, any members of the church have entered into or contracted any polygamous or plural marriages?

A. Not to my knowledge; I have no knowledge and never have heard of any.

Q. State whether or not since that date you have advised, encouraged, or assented to the practice of bigamy, polygamy, or unlawful cohabitation by any members of the church?

A. I have not.

281 Q. Do you know of any other officers of the church who have advised, encouraged, or assented to that?

A. I don't know of any.

Q. State whether or not you have any hope or expectation that the practice of polygamy or plural marriage will ever be reëstablished by the church?

A. I have not.

Cross-examination of George Q. Cannon by Mr. VARIAN:

Q. Do you know, Mr. Cannon, what the number of persons during the preceding years, say for seven, or eight, or ten years, who have received relief from the church in the way you have stated; have you made an examination of that; what the average number is?

A. No, I have not.

Q. From what data have you gained the information that enables you to state that you have stated?

A. From a schedule that is drawn up and presented to the first presidency for their action.

Q. By whom?

A. By the bishops*l*; it comes to us from the reports of the wards.

Q. State is each bishop makes his own report?

A. Each bishop makes his own report.

Q. Now, who tabulates that statement?

A. Well, it is tabulated by our clerks.

Q. The clerks in the church office?

282 A. Yes, sir.

Q. And you are testifying that from the tabulated statement made by the clerks in the church?

A. Yes.

Q. Of the reports given or supposed to be given by the various bishops?

A. Yes, sir; I reported from memory, my recollection is very distinct concerning the last appropriation, because it is a matter that I paid considerable attention to; the amount of poor that we had——

Q. (Interrupting.) Have you any means of ascertaining whether the necessity for affording a relief to so large a number of persons will continue in the future?

A. I am inclined to think it will continue.

Q. What do you base your opinion on?

A. On the fact that our expenses through taxation is increasing.

Q. Has this relief you spoke of been already awarded?

A. Yes, sir.

Q. And has the relief required prior to this during each semi-annual period been already 'warded?

A. Yes, sir.

Q. It has been given?

A. Yes, sir; it has been given.

Q. Do you know what proportion of these people are old and infirm as distinguished from those, who by misfortune or accident became placed in that position?

A. I don't know. I would like not to hazard the statement; a great many of them, I couldn't state the exact proportion.

283 Q. Your church is engaged and has been for a great many years in prosyliting and bringing people from foreign lands to Utah?

A. Yes, sir.

Q. They come two or three times a year, do they not?

A. At least that many.

Q. Many of them impoverished people?

A. Yes, sir.

Q. Requiring assistance when they get here?

A. Yes, sir.

Q. Is it not true that a large proportion of those who come—the major portion——

A. (Interrupting.) No.

Q. About what proportion of them are old and infirm people—impoverished poor people?

A. There are not so many infirm people who come with the emigration. The emigrants need as a rule some assistance when the' reach here.

Q. All of them?

A. No, sir.

Q. Generally?

A. No, not generally even, but to enable them to get established, and under our system they are taken charge of until they get in place and locations where they can be watched over until they get accustome' to the country and to get into such ways of living.

Q. Well, these people in that position in applying to the church receive relief?

A. Yes, sir; but I wouldn't wish to have the impression go out from anything that I say; in fact, it would be a false impression that
284 the bulk of the *mie*grants are dependent.

Q. Well, what proportion of them generally require assistance after they get here?

A. Well, I would not think that there would be one of ten that required direct assistance further than guidance.

Q. What proportion of them require assistance to get here; I am speaking of material assistance, not council?

A. From the church, none get assistance.

Q. I infer from that there is assistance granted; how is it granted?

A. It is granted by indiv'uals, by *fri-* friends sendin*g* means to their friends.

Q. Is there a fund under the control of the church authorities for that purpose?

A. There was, but it was exhausted, and taken charge of—the remains of it—by the receiver.

Q. What there was left?

A. Yes, sir.

Q. Since the dissolution of the migration fund corporation and the taking charge of the funds by the receiver, what has taken its place?

A. Nothing; the church has discontinued entirely rendering any help.

Q. Does the church give credit to those of the friends of the emigrants, who contribute in that way to their coming here, in their accounts with the church?

A. No, sir; neither directly or indirectly does the church aid in the emigration of the people, nor has it done so for some years.

Q. Isn't it true that large numbers of aged and infirm people,
285 and poor people, have been coming here into the Territory from foreign lands?

Mr. DICKSON. We object to that as immaterial.

Mr. VARIAN. I hadn't finished the question.

Q. At the invitation of the church?

A. No, sir; for this reason—the reason very obvious—that they can not pass the inspection of the officers in New York without they are self-supporting, and it is against our policy to bring ourselves in contact with the regulations which exist, the emigration regulations which exist.

Q. How long have those regulations been in force?

A. For some years?

Q. Very few, hasn't it?

A. Well, they have been subject to inspection for a long period, as I understand.

Q. The church as such, however, does not deny the privilege of emigration to any person on account of the state of health or financial condition of any convert?

A. It does not come within our province to assent or deny; they do as they please.

Q. In what way was the aid extended that you speak of to these sixty-eight hundred and eighteen people; how is it given?

A. Given through the bishops.

Q. Well, in what form?

A. In the form that they need it—some portions would be money, other portions will be provisions and fuel.

Q. Isn't it principally afforded from the stores of the church in the different Stakes?

286 A. A great deal of it is, really—is comparatively a small portion of our funds.

Q. Isn't it generally so?

A. Yes; I may say it is generally so.

Q. Have you a system of checks or orders which represent values in produce in the different stakes?

A. No, sir.

Q. You have had them?

A. We have had them, yes; they have been in use here in this city particularly for convenience, there not being sufficient money to meet all the requirement'; for the convenience of the workmen and others they have been issued and for the convenience of the poor.

Q. And also in the convenience of the church, of course, in disposing of perishable products?

A. Yes; that also has been a consideration.

Q. Now, as I understand you, a poor person in a community or stake applies to his or her bishop, who investigates the matters, and is it upon the bishop's orders that the relief is afforded?

A. In the first place, teachers visit the people at stated intervals in all the wards, inquire into their conditions, and in cases of want they become cognisant of it, and it is brought to the attention of the bishops.

Q. And the bishop gives his order, does he?

A. The bishop, yes, makes provision, as I say, from these fast

287 offerings; he pays those out to whoever may need the most, and that is supplemented by the action of the relief societies, which are ladies, and if there be still a deficiency in his ward of funds to supply the wants of the needy he then applies for the deficiency to the general authorities.

Q. Does this sum of thirty thousand and twenty-nine dollars represent the deficiency?

A. For that six months; yes, sir.

Q. Paid out of the general fund of the church?

A. Yes, sir.

Q. Have you got the account of its division and appropriation among the different stakes?

A. Yes, sir.

Q. How much of it was applied upon the stake of Salt Lake?

A. 1,641 poor needing assistance; $13,750.00.

Q. Nearly half of it is applied in this stake?

A. Nearly half; yes.

Q. Approximating towards a half?

A. Approximating towards a half; yes, sir.

Q. In what stake was the largest sum other than that appropriated?

A. Cache.

Q. Cache County?

A. Cache; yes, sir.
Q. What does that amount to?
A. $3,400.00; 963 asking for support.
Q. What is the next, please?
A. Millard.
Q. Number of persons?
A. There are only 43 down in this.
Q. What is the amount?
288 A. $1,053.00. The next is Sanpete County; we call it a stake; the stake really is comprised almost in county lines; $970.00,
x288 asking for support.
Q. The next in order?
A. Sevier, $912.00; 267 seeking support. I have made a mistake; I have omitted Weber.
Q. Well, give us Weber now.
A. Weber is $1,470.00, with 553 seeking support.
Q. Proceed and please in its order.
A. I have given you Sevier, I think.
Q. Or if it is more convenient you can take them the other way.
A. Then I could give them to yourx alphabetically. Bannock Stake, that is in Idaho, 201 seeking support, $395.00; Bever, 83 seeking support, $200.00; Bear Lake, 208, $425.00.
Q. Is that in Idaho, too?
A. Bear Lake is in Idaho, yes; Boxelder, 238, $630.00; Davis, 157 seeking support, $475.00; Cassia, also in Idaho, 23 seeking support, $50; Emery, 88 seeking support, $180.00; Juab, 64 seeking support, $285.00; Kenab, 54 seeking support, $25.00; Milad, 38 seeking support, $20.00; part of that is in Idaho and part in Utah; it is in Boxelder County, Utah; Maricopa, 8 seeking support, $180.00.
Q. That is in Arizona?
A. That is in Arizona, yes, sir; Morgan, 67 seeking supoort, $420.00; Oneida, 101 seeking support, $170.00.
Q. Idaho?
A. Oneida is in Idaho, yes, sir; Panquitch, 91 seeking support, $520.00.
289 Q. Where is that?
A. Panquitch is in Sevier; it is in Emery, I think.
Mr. RICHARDS. Garfield?
A. Garfield County, Parwan, 197, $700.00; that is in Iron County, San Juan, 27 seeking support, $200.00; San Louis, that is in Colorado, 49 seeking support, $200.00; Snow Flake, that is in *Q*rizona, 75 seeking support, $432.00; St. John, 34 seeking support.
Q. Where is that?
A. St. John is in *Q*rizona; it is in Pache County; St. Joseph, that is in *Qi*rzona, also, 108 seeking support, $185.00; St. George, that is in Utah, Washington County, 152 seeking support, $430.00; Summit, 140 seeking support, $585.00; Tooele, 59 seeking sup'ort, $135.00; Utah, 623 seeking support, $782.00; Uintah, that is out here east, 41 seeking support, $105.00; Wasatch, 55 seeking support, $55.00; Diaz, that is in Old Mexico, 10 seeking support, $200.00.
Q. Is that the end of it?

A. Yes, sir.

Q. Were any of these contributions for purposes 'f emigration?

A. No.

Q. I mean going to these places.

A. Not just for the actual support of the people, for the relief of their necessities.

Q. Nothing for the construction of canals or putting in dams?

A. Nothing; no, sir.

Q. The stakes of Salt Lake, Weber, Cache, Utah, and Sanpete are the richest and most prosperous communities in Utah, are they not?

A. I suppose that is true.

290 Q. And also the most populous?

A. Yes.

Q. In all of these stakes are there not poorhouses kept by poor rates or taxation of the people?

A. Well, I can speak of Salt Lake and I think of Weber, but as to the other counties I don't know anything; I remember that there is a county poorhouse on the State road, and I passed coming out of Ogden, the poorhouse that is said to be the county house there.

Q. Do you know whether any of these recip'ent*s* of the church buounty were receiving aid from other sources?

A. Excepting these that I have mentioned, our fast offerings, and relief society; I know of none receiving from any other source.

Q. In all of these instanc's was relief also afforded by the relief soci'ties and through the relief soci'ties and fast offerings?

A. There is not a stake that has not fast offerings; there is one report from San Juan that is lacking the relief societies.

Q. Well, did all of these people re'eive relief in that way?

A. I think so.

Q. You don't know what proportion of them are permanent objects of the church bounty?

A. No; I don't.

Q. Do you estimate the demand upon the church for the succeeding six months, that is the six mo'ths ending on December 31st, to exceed this sum?

A. It has been gradually increasing a little, not much, it has increased somewhat.

Q. How much has it increased in 10 years?

291 A. Well, I should think it probably may have increased from five thousand to seven thousand dollars.

Q. Well, at this rate it would be about sixty thousand for the year?

A. Yes, sir.

Q. And in ten years it has increases five or six thousand dollars?

A. Probably in ten years, it did not exceed that, it may; as I remember, it would not exceed fifty-two thousand dollars probably for a year—fifty-three thousand.

Q. Now, what proportion of this sum was paid in cash; you can tell the precise sum, I suppose, can you not?

A. I don't know that I can from memory.

A. Well, you have a record of it?

A. Yes, sir. I don't know whether I could get that or not, I could find that out I think, probably. We pay as a rule every quarter, or a third in cash.

Q. Well, isn't there a precise account kept here at the central office of the amount that is paid?

A. Yes; there is an account kept.

Q. Does not this account represent the charges made by the several bishops in charge of the different stakes or tytheing yards, against the fund in produce as well as money in their hands?

A. Yes, sir.

Q. And wasn't the amount for each stake paid out of the local fund for each stake.

A. As I——

Q. Represented by—I call it the tithing yard.

A. As I explained yesterday there may be places where there is an extraordinary—rather an extra draft made upon the local office and
292 the funds will be ex'austed—produce and other articles will be ex'austed there; in such an event then a draft will be made upon some other place for supplies.

Q. That is not generally the case?

A. It is generally the case all over.

Q. You mean on some other stake?

A. No; it is confined generally to the stake itself, although in some instan'e some other stakes.

Q. Now take the stake of Salt Lake, where thirty thousand seven hundred and fifty dollars was expended in produce and money, expended in money and produce during the time you specified, was not that sum expended by the stake itself?

A. Yes, sir.

Q. Out of the local stake fund?

A. Out of its own fund; yes, sir.

Q. And isn't that true of each of the other stakes, except in as far as they might borrow from one stake to another?

A. Yes, sir; that is true.

Q. And whenever they so borrow they are charged with it, are they not?

A. Well, not; for instance, to illustrate, we will take St. George where the expenses are somewhat heavy there, and their funds ex'austed; they may not produce flour there; wheat is not raised in that region, and they don't have enough to supply their wants; we give them orders on adjoining stakes, such as Bever; they may go as far north as Bever, and in some instances as far as Sanpete Valley, to get the provision that they can not raise, the flour or wheat that they can not raise in St. George, or in that stake.

293 Q. Well, it is charged against them, isn't it?

A. Yes, sir.

Q. And the other stake is c'edited with it?

A. Yes, sir.

Q. The account' are kept in that way?

A. The accounts are kept in that way.

Q. Just as between two sto'es in a town?

A. Yes, sir.

Q. Now, this general fund that wa' surrendered by the church to the re'eiver did not belong at all to these several stakes; it belonged to the general organization of the church, didn't it, as a whole?

A. Yes; I think that as far as I recall all of it belonged——

Q. (Interrupting.) It was not subject to the demands or orders of the local stakes authorities anywhere?

A. As I have explained, our contributions are all made and placed under the direction of the general a'thrɔtieis; of course the bishops then in the various wards loose control of that; they have no voice only as they receive orders, or it has passed into their hands, and that would apply to this general fund that has been seized by the Government.

Q. Well, this portion of the fund that was invested in realty here and represented by gas stock, railroad stock, an' telegraph stock, and at one time I think you mentioned co-op. stock?

A. Yes.

Q. That had been segregated and taken out of these local funds, had it not?

A. Yes, sir.

Q. And gone into the general fund of the church?

294 A. W'll, there are really no local funds—only whe'e there are local funds they are in the custody now—under our present management—in the custody and the ownership of the ecclesiastical corporations in the several wards; then at that time that this fund accumulated there were no such organizations, and they were under the charge and in the possession, it may be said, of the general authorities—of the trustee himself.

Mr. DICKSON. Let me understand you, Mr. Cannon; although the donations, whether in kind or money, were not taken out of the ward, but left there under the control of the bishops, yet to be disbursed by him under the direction of the first presidency?

A. Of the trustee in trust.

Q. The head of the church had control of them all through the bishop?

A. Yes, sir; that is the correct statement. The trustee in trust, the first presidency as a first presidency, did not control these funds at that time; it was only since the disincorporation of the church, and the office of trustee falling, of course, through in consequence of that, that the first presidency have had control; but formerly it was the trustee in trust himself that had control, and was responsible to the church for that property.

Q. What became of the surplus money and produce that was gathered in the local st'kes from the people, after meeting the local demands upon it for church and charitable purposes, what became of the surplus; did it go into the general fund?

A. Yes, sir.

295 Q. Was there a yearly or semiyearly accounting and transferring?

A. Yes, sir.

Q. Now, to arrive at the point to which I was directing your attention, after that had been accomplished it did not go back, as you stated before, into the local fund?

A. No, sir.

Q. But the carrying on of the local business deprnded upon the daily and the future contributions?

A. Yes, sir; and also on the appropriations made by the trustee to meet the wants of the people. Now, this sum of two hundred and sixty thousand dollars that we compounded for, that is, that we gave the seventy-five thousand dollars for, consisted of property that was left in the hands of these local officers; much of it was v'lueless.

Q. That was there at the time?

A. That was there at the time.

Q. That had *b*ot been converted into the general fund yet?

A. No; well, it was held——

Q. (Interrupting.) At the time of the dissolution?

A. It was held under the direction of the trustee in trust.

Q. But if these l*eigls'tia*ve proceedings had not taken place, and the business of the church had been carried on as it ordinarily was, in the course of time those funds, represented by this statement as existing in the different ecclesiastical stakes, or the surplus of them, would have gravita*ye*d into this general fund?

A. Oh, yes.

Q. And remained there?

A. They were really a part of 't at the time.

296 Q. Except that they——

A. (Interrupting.) Except that they were in the hands of local agents.

Q. And this money, outside of the seventy-five thousand dollars, represents what the general fund of the church had accumulated in the way you have indicated during the past years?

A. Yes, sir.

Q. From the different stakes?

A. Yes, sir.

Q. For the general uses of the church?

A. Yes, sir.

Q. Now, it is true, is it not, that the *ca*haritable purposes of the church are almost entirely carried out through the medium of these stake associations in the way that you have indicated?

A. Yes, sir.

Q. From the local funds before any*t* of them have passed into *of* the general fund?

A. No; scarcely not all.

Q. Well, I didn't say all; I said almost so.

A. Yes; as far as they go, of course they are used.

Q. What has been the average annual receipt' from contributions of the people yearly during the past seven or eight years—just generally, without going into details—about what would it amount to?

A. You mean the entire income?

Q. In contribut'ons.

A. From the whole church?

Q. Yes.

A. Well, it has varied; it has varied between half a'd *ht*ree-quarters of a million. I would say in connection with , however, that for man'

years we gave credit to every person who made a contributions of two dollars for every bushel of wheat; that is what we called the office
297 price, and that prevailed until a comparatively recent period, and hay and other articles that were cont'ibuted were c'edited at these exceeis've prices. The rule had been established in early days here when grain was valuable, and it was thought it would be satisfactory to the people to receive these credit'. Their produce was credited with that amount, no matter how far distant that might be; for instance, taking a remote county like San Juan, they would get credit for two dollar' a bushel for their wheat, when in reality it could not be marketed for one and quar'er, and that would also be true with hay and potatoes and perishable articles. They were all put in at a very high v'luation.

Q. Were they put at that same price?

A. They were allowed that same price; yes, sir.

Q. It didn't make any difference so far as——

A. (Interrupting.) Well, it made a difference in this, it swelled the figures, you know.

Q. You say thesse were all voluntary contributions?

A. Voluntary contributions; yes, sir.

Q. What differ3nce does it make, then, what price was put upon them?

A. Exeepting this, that it would seem like an enormous income to have half a millions of three-quarters of a million, an enormous income, but when all the facts are known concerning it, the amount of money that has been expending in caring for it and transporting it to market—that was necessary to do so—it shows a very different condition.

Q. What I am getting at was this: What was the object of put-
298 ting any valuation at all, if you simply took what a man gave?

A. I have been opposed myself to putting values on anything.

Q. What was the reason for it—well——

A. Well, there has been a reason; the bookkeepers fancied they could not keep the run of it so well.

Q. They couldn't keep the run of the number of bushels or animals, etc., without putting values?

A. Yes; for instance, in the value of a horse.

Q. Is that the only reason?

A. That is the only reason, so far as I know.

Q. Now, you say from a half to three-quarters of a million. I asm asking you for an average. Was there for a number of years that it would about average three-quarters of a million, and a number of years averaged half a million?

A. Probably it has increased within—of course as people have increased it has increased somewhat.

Q. Has it increased during the present year over the past year?

A. We have not had our returns thus far.

Q. Then take 1890. Was it increased then over 1889?

A. There was very little difference; in fact, I have not now on my mind exactly——

Q. (Interrupting.) Of course I didn't expect that; I just want to get the generalizing.

A. I think there was a falling off this last year; it was a hard year; we all felt it, and our contributions were lessened.

Q. That was in 1891 you are speaking of now?

A. In 1890; 1891 we have not had our returns or reports yet.

299 Q. How was 1889?

A. Well, it was a pretty good year because it compared very well with 1890.

Q. *1888*?

A. It was less in 1888.

Q. Well, is the difference in these years marked?

Mr. DICKSON. We enter an objection here that this is all irrelevant and immaterial and consuming time unnecessarily.

(Objection overruled and exception taken.)

Q. Is it appreciable, or is a slight falling off?

A. Oh, very slight; comparatively slight. It fluctuates according to the times, you know—ability of the people.

Q. Well, naturally owing to the prosperity or nonprosperity of the people for the year?

A. Oh, of the people; yes, sir.

Q. Well, the community increasing all the time naturally increases——

A. (Interrupting.) It causes an increase, as you say it would, but there have been causes which have operated to depreciate the tithing; the seizure of this property—people have said, we don't want to give our property, to have it taken away from us, to be robbed of it, and we had rather keep it ourselves, and that has had a great effect on many men.

Q. That was temporary, was it not, for a year or two?

A. No, sir; I think it has had a very marked effect on the income of the church.

300 Q. Since the matter has gone to judgement and is ended ——

A. (Interrupting.) Well, they are still afraid there will be some new legislation, and some new br'ke made upon us.

Q. Well, now, was not 1888, the receipt of 1888 greater than in 1887?

A. I think not; there was a very marked falling off there.

Q. You think they were greater in 1887 than in 1888?

A. That is not 1887; in 1886.

Q. Was there any falling off in 1887?

A. In 1887 the law had passed, and a great many people—it was the gen'al expression throughout the Territory, so far as I had opportunity of knowing, that there was no use for us to put property or to contribute, if it was going to be seized, and the people were in a state of apprehension.

Q. I understand that.

A. You understand, of course—you can see that.

Q. Now, in 1888?

A. Well, it was still felt and it is felt to-day.

Q. Was it felt *is* so marked a degree as in 1887?

A. No, sir.

Q. In 1889, wasn't there an improvement?

A. No, sir; considering the hard times, you know, as I say, I think 1888 was in excess of 1889.

Q. 1889 was a hard year?

A. Yes, sir; and 1890.

Q. Still you did make provision for all the necessities of your people?

301 A. No, sir; we have not been able to meet our expenses without borrowing; we are borrowing to-day to meet our current expenses.

Q. Well, ha'e the settlements been made for the year with the different stakes?

A. Not entirely; we received contributions through the month.

Q. Now, you speak of these expenditures for the poor; how much have you expended during the y'ar for meetinghouses?

A. We have not expended as much during this year, and have not for a year or two, as we have b'en requested in conseuq'n'e of our——

Q. (Interrupting.) How much outside of temples; now, I don't refer to the building of temples?

A. Well, I would think probably about twenty thousand dollars.

Q. Is that in this Territory?

A. In this Territory; yes, sir.

Q. Haven't you meetinghouses in each stake and community?

A. In some we have not; they are in course of construction in many places.

Q. About how many?

A. Well, it would be difficult for me to give an exact statement about that.

Q. Now, in the building of a meetinghouse don't you require the people themselves to put their shoulders to the wheel?

A. Yes, sir.

Q. Contribute in labor, in these outside communities and in material?

A. Yes; that is the practice.

302 Q. So that the people themselves largely built the meetinghouses without drawin' upon the church fund?

A. Yes, sir; as a rule that is the case.

Q. Do you give them credit for that?

A. No, sir; they have their own method of doing that; they call upon us for assistance; they will say, "Here, we have expended so much money on our meetinghouse, and we have got it so far advanced; now, we have ex'austed ourselves, and we ask the church to assist us." And they make a statement of how much the house has cost and what the finishing of it will cost, and apply to us for that.

Q. Well, is that charged against the stake?

A. No; it is not.

Q. Does it come out of the stake?

A. No, sir.

Q. That comes out of the general fund?

A. Out of the general fund; it is not held as a debt against them at all.

Q. Now, were there any other purposes that might be called charitable for which you expended funds in relation to these meetinghouses and for relief of the poor during the past year?

A. Well, there have been, as I said to you, struggling settlem'ts that we have assisted, and then those poor Indians.

Q. Now, what proportion, just in round numbers, if you know, went to the poor Indians, just generally, this last year?

A. Well, I would think there would be between 'en and fifteen thousand dollars.

Q. To the Indians?

A. To the Indians, yes, sir; I would say in fact fifteen, taking
303 into consideration the visits of Indians, who have been fed, and to whom presents have been made. Only a few days ago you saw probably a number of Indians on the street. They had not visited here for a long time, and they stopped me on Sunday in the street; they recognized me, and said they wanted to come and see me—see us; and they were up next day, and we had to give them a lot of presents, flour and beef.

Q. Are these Indians still maintaining their tribal relations?

They were not.

Q. Some of them were not?

A. Some of them were not, and we*n* sent a clerk down to the store and gave them what they wanted from the store.

Q. Those maintaining tribal relations receive relief from the Government, do they not?

Tabby, who is an old friend of ours, a man supposed to be a hundred years o' age—our relations have bee*h* exceecingly friendly always; he is almost blind; he comes over here sometimes with his chiefs, and we have to feed them and make presents to them.

Q. How much in round numbers was probably expended, as you spoke yesterday, to the aid of the ministry?

A. We have no salaried ministers.

Q. Now, I understood you to speak yesterday of aiding persons infirm and aged preachers of the church?

A. Well, I would think the means devoted to that—the aid of those who devote themselves must be over fifty thousand dollars altogether. You see the bishops get a certain percentage of these contributions for
the care of it. President Taylor, while he was trustee in trust,
304 looked up the question as to how it was in the days of Moses, and he agreed with the leading men that ten per cent might be given to those who handled and cared for these contributions.

A. I was speaking only of those that receiv'd relief, not men that earned what they got.

'. Yes; it would cover several thousand dollars—a good many thousand dollars. Men that have been long in the service, who spent the early part of their lives, when they were hale and hearty, in the service as missionaries, as elders, preaching the gospel, and did so without purse or scrip*t*, and now in their old age they come to us frequently, and we often extend relief to them according to our custom.

Q. Is this included in the thirty thousand dollars, you say?

A. No, sir.

Q. Is it outside of that?

A. It is independent of that.

Q. Any portion of this fund paid to persons going abroad on missions?

A. No, sir.

Q. No assistance given there?

A. No. The rule has been now, and has been for a great many years in fact, that in the selection of missionaries men should be selected who would be able to bear their own expenses in going.

Q. Any portion given to schools?

A. No, sir.

Q. Church schools?

A. Oh, there has been given to church schools; yes, sir.

Q. I see by the r'port made a year ago there were some 21 church schools of the Territory; since then they have increased.

305 A. They have been receiving them.

Q. What proportion of the fund do they get?

A. There was an appropriation made a year or two of fifty thousand dollars; that was expended, and we appropriated some more since, exclusively for church schools.

Q. What this year, about w'at proportion of the fund—how 'uch of it; fifty thousand dollars?

A. I think we made an appropriation here a short time since of twenty-five thousand dollars.

Q. Is thia an annual or semiannual appropriation?

A. No, sir; it is just as it gets ex'austed. It is a new thing to make appropriations for schools; quite recently.

Q. They are commencing now?

A. Yes, sir.

Q. Within a year the call has been made to start church schools?

A. Yes, sir.

Q. And the church is aiding in that work?

A. Ss far as we can. We have very little means to aid with. There are a number of us who are very much in favor of Mormon church schools, but the want of funds prevents us from doing what we would like to in that direction.

Q. Schools where the church doctrines are taught and the church books used?

A. No, sir—well, to some extent. We are believers in the hBible; we think that that ought to to be t' text-book. I am speaking now of my personal feeling; I am one of the board; I am very much in favor of the Bible being a text-book in the schools. Our district schools do not permit its addmission.

306 Q. The other books—the Book of Mormon and Doctrine and covenants?

A. The Book of Mormon; the dictrine and covenants has not been looked upon or used that I know of.

Q. Isn't that the understanding now? Do you recollect a letter put forth by the president of the church in relation to the subject, a year or two ago, in which he spoke particularly of those three books?

A. Yes, sir.

Q. Called upon the people to recognize the necessity for establishing schools, where they could be used?

A. Yes, sir.

Q. Well, now, these schools w'll use these books, will they not, to a greater or less extent?

A. To a greater or less extent.

Q. That is the purpose of them?

A. Yes, sir.

Q. To get a religious education?

A. However, I *amy* say to you, the Book of Doctrine and Covenants has never been looked upon—I have never looked upon it—as suitable for children; the Book of Mormon and Bible I am very much in favor of.

Q. This is only your personal——

A. (Interrupting)M. As superintendent of our Sunday schools, I have had some influence in that direction.

Q. I am not depreciating your influence or your judgement.

A. And, therefore, I know.

Q. Well, now, these schools that you are commencing or building—I use building *building* in a broad sense—building up—you expend to depend in some degree upon the church for sustenance and maintenance, don't you?

T. To some extent; I may say that we have hoped——

307 Q. (Interrupting). Let me ask you, would your people, outside of the centers of civilization and population, like Salt Lake City, for instance, and Ogden, etc., generally through the country in the agricultural districts, are they not rather a people of moderate means—poor people?

A. Yes, sir.

Q. Who unaided and lone would be unable to maintain their children for any length of time at these higher educational schools?

A. Generally.

Q. And of necessity the church community as a whole expects to aid the schools, for the purpose of aiding these children generally?

A. Just as other denomi'ations do under similar circumstances.

Q. And of necessity you have nothing to depend upon but the fund?

A. No; I was going to say that we have hoped in the establishment of church schools, and propogating that idea, that a great many liberale minded people would bequeaths, and there are instances where they have in their will bequeatched sums of money to endow such schools.

Q. Now, Mr. Cannon, calling your attention to the so-called mani'esto, I understand the original law of the church was derived from revelation, given to Joseph Smith?

A. Yes, sir.

Q. The prophet of the church; that it as given by him was carried into the church creed, and mentioned in the church publications?

A. Yes, sir.

Q. I have forgotten whether it was the Book of Mormon——

308 A. (Interrupting.) It is in the Book of Doctrine and Covenants.

Q. Now, do you understand that that principle as anniunced through that revelation is no longer the true principle as a tenet of the faith of the church?

A. I believe and know, as I may say, as much as human being can know from a divine source, that that revelation was from God, but circumstances have arisen of such a character as to compel us to no longer obey it.

Q. To suspend its operation?

A. Yes, sir; not to suspend its operation, but to cea'e its practice.

Q. Well, to cease its practice?

A. Yes, sir.

Q. Cease the practise and suspend the operation of what is still a divine principle?

A. Yes, sir.

Q. The truth is never anything but the truth, is it?

A. Oh, it is unchangeable.

Q. Unchangeable; that is the idea that I wanted to direct your attention to.

A. Yes, sir.

Q. Then, you don't understand that God has changed that principle?

A. Not in the least.

Q. But that He has given permission to cease the practise; is that the idea?

A. Circumstances have been such surrounding us for so many years that of course I could not help but see in the position that I occupied, having to pass through some pretty severe ordeals on that question,
309 that unless there was some wonderful interposition of Providence, the force of public opinion becoming intensified, as the years rolled by, would eventually compel us either to abandon—that is, to cease its practice, or we would be crushed; that seemed to me an inevitable consequence. I hoped for years that there would be some such interposition of Providence in our behalf; I hoped for years that the nation would give us credit for our sincerity, and that they would see that in this practice we were animated by the sincerest and best of motives, that it was not licentiousness—no sensual feeling, for the reason that we could, if it had been licentiousness and sensuality, we could have observed it without such consequences.

Q. You will observe, Mr. Cannon, that I wasn't asking that; I was simply getting at what the fact was.

WITNESS. I only wish to make one remark in connection with the question, and that is that there being no divine interposition, of a miraculous character, to save us, after having made all these sacrifices, I believe that God inspired President Woodruff to say unto us that we had gone far enough.

Q. You see I didn't ask that.

A. You will pardon me for saying that I have said; I didn't intend to go beyond what I thought was a proper answer in the matter.

Q. This manifesto is the advice of President Woodruff, personally, is it not?

A. Yes, sir.

Q. It is not a command, is it?

A. President Woodruff is a very modest man——

310 Q. (Interrupting.) I didn't ask that; I asked you, is it advice or command?

A. I want to explain that it would have been a command if some men had issued it, and it was a command, really.

Q. Well, that is the answer to it; it was a command, really?

A. Yes, sir.

Q. You say you believe it is by inspiration; what is the cause or the foundation of that belief?

A. The testimony that I myself received.

Q. Was that testimony personal to yourself?

A. To myself.

Q. You don't know whether the church at large received that testimony?

A. I am fully persuaded they did.

Q. What proportion of the membership of the church did that ten or twelve thousand people represent?

A. Well, I would think that of the men, women, and children they approached one-twentieth; probably more.

Q. What proportion of women and children composed that audience of ten or twelve thousand people?

A. They were very few children; they were about equally divided, probably, between the sexes.

Q. Men and women?

A. Men and women; yes, sir.

Q. You say the manifesto was unanimously accepted?

A. Unanimously accepted, so far as I know, and I watched the congregation closely when the resolution was proposed.

311 Redirect examination of George Q Cannon by Mr. RICHARDS:

Q. You stated in your cross-examination, as I remember, that the counties of Salt Lake, Weber, Cache, Sanpete, Utah, were the most wealthy and populous counties, and received the largest amount of means from the church for the support of the poor. State whether or not in those counties the larger towns and cities of the Territory exist?

A. They do.

Q. In fact, all the principal cities and towns?

A. Yes, sir, are in those counties.

Q. You also stated in your cross-examination that prior to 1887 the funds of the church were controlled by the trustee in trust of the church. Who was the trustee in trust?

A. John Taylor.

Q. And who before him?

A. Brigham Young.

Q. State what position they occupied other than that trustee in trust.

A. They were presidents of the church at the time they were acting.

Q. They were both presidents and trustees in trust of the church?

A. Yes, sir.

Q. I understood you also to say that a portion of the money paid to to the receiver was borrowed, and that the church has been borrowing money ever since?

A. Yes, sir.

Q. Is there any part of the ten or fifteen thousand dollars per annum that you state had been paid to the Indians included in this $60,000 per annum?

A. Not a penny of it not a cent of it.

312 Q. There is no part of it included in the amount you have given there as having been expended for the poor?

A. No, sir.

Q. That was separate and distinct?

A. Yes, sir.

Q. Were there any appropriations of money made to church schools prior to 1887?

A. To church schools, none; no, sir.

Q. You state the income of the church was from one-half to three-fourths of a million dollars, as I understand it, based upon these fictitious figures that you speak of?

A. Yes, sir.

Q. What would be about the net amount that would be deriv'd by the church in actual value?

A. From some of the stakes scarcely anything, sir, has been received; consumed there locally; and there has nothing come to the general fund, comparatively nothing, from a great many of the remote stakes; the cost of caring——

Q. (Interrupting.) I will ask you this question, whether or not these contributions were in produce and different kinds of property?

A. Mainly in produce.

Q. Now, what percentage of that amount, one-half to three-fourths of a million, would be realized as net income to the church after converting this and reducing it to its actual value or to cash?

A. Oh, there wouldn't be over two hundred thousand dollars.

313 Recross-examination of George Q. Cannon by Mr. VARIAN:

Q. Mr. Cannon, we would like to have you produce from book or schedules the annual receipts for the years commencing with 1883 to 1889, as represented by reports like that?

A. I may be able to get these reports, perhaps; I am not sure about that, but I don't think we have got a book nor a document in any form in our hands or within our reach up to the winter of 1887.

Q. Up to that time?

A. The winter of 1887–'8.

Q. What has become of that?

A. That is a question I can not answer; they disappeared.

Q. Weren't they under the control of the heads of the church?

A. They were under the control of the heads of the church; that is, under President Taylor's control as trustee in trust.

Q. Were they taken from the church office?

A. They were taken from the church office.

Q. About that time?

A. About that time. We were on the underground, Mr. Taylor and myself, as it is now called; we were absent from the city, and those books disappeared.

Q. Didn't somebody send for them?

A. Well, perhaps President Taylor, if he were living, might say, but I can not.

Q. He didn't take them with him, did he?

A. No; I don't think he did.

Q. Do you say that you don't know where they are; you have never seen them?

314 A. I have no more idea, Mr. Varian, than you have.

Q. Who was the natural custodian of them?

A. He.

Q. Now President Woodruff would be?

A. Yes, sir.

Q. Well, outside of that, can't you get the information generally, without any precise statement—without getting down to a day?

A. Well, I might give you some rough estimate by inquiring around and refreshing my memory; anything that I can give you I will be pleased to do it, for I want to say that there is nothing that I know of that we need conceal about our affairs.

Q. Well, it is not for the purpose of just gratifying curiosity to know how much it is, but to make some comparisons.

A. Yes, sir.

Redirect examination of George Q. Cannon by Mr. RICHARDS:

Q. State whether or not you have caused diligent search to be made for weeks to find these books and reports, and anything and everything that could be ascertained in regard to these matters that we have been speaking of—that is, the income and disbursements of the church during the period prior to 1887.

A. We were very anxious to obtain the reports that had been made to the conferences, and everything has been done within my power, and I may say the same for President Woodruff; I have taken pains myself to inquire of every person that would be likely to know where we
315 could get *get* trace of where these reports were, because we were desirous to have them produced; we have not been able to get trace of them, and I am afraid they are destroyed and lost forever.

Q. Wasn't that search instituted as much as two months ago?

A. Yes, sir.

Q. And has continued ever since more or less?

A. Yes, sir.

316 JOSEPH F. SMITH, being sworn as a witness in behalf of the defence, testified as follows:

Direct examination by Mr. RICHARDS:

Q. What is your age, Mr. Smith?

A. 52.

Q. Where do you reside?

A. I reside at present in Salt Lake City.

Q. How long have you resided in Salt Lake City?

A. I came to this place, where Salt Lake City stands, in 1848. My home has been here, whenever I have had a home, most of the time since then.

Q. This has been your place of residence all the time, has it not, since that time, since 1848?

A. Yes, sir; with the exception of—I presume that is so.

Q. It has been your home all the time.

A. It has been my home.

Q. You have been absent from the Territory at different times, I suppose, during that period?

A. Yes, sir; very frequently.

Q. How has it been since 1885—state whether or not you have been absent from the Territory most of that time?

A. I have been absent from the Territory most of the time since 1885.

Q. What official position, if any, do you occupy in the Church of Jesus Christ of Latter-Day Saints?

317 A. I am the second counsellor to President Woodruff.

Q. One of the first presidency of the church, are you?

A. One of the first presidency of the church.

Q. Well, how long have you occupied that position?

A. Well, as counsellor to President Woodruff, I have occupied the position since 1889.

Q. Were you ever a member of the first presidency of the church prior to that?

A. Yes, sir.

Q. During what period?

A. During the presidency of President Taylor.

Q. That was from 1880 to 1887, was it?

A. 1880, I think, to 1887; I don't recall the dates.

Q. What other position in the church have you occupied?

A. I have been since 1867, I believe, if my memory serves me right, one of the 12 apostles—belonged to the quorum of the twelve.

Q. (Showing witness Exhibit A to defendants' scheme). Just examine that document please, and tell me whether you recognize it, and if so, what *isties*?

A. I understand this to be the document which is termed the manifesto of President Woodruff.

Q. When was it issued?

A. It was issued, as I suppose, in October, 1890.

Q. October or September?

A. September, I believe; that is, I have reference to the conference.

Q. Were you present at the conference when that was presented?

A. No, sir.

318 Q. State whether or not this manifesto met with your approval and endorsement.

A. Yes, sir; it has met with my approval.

Q. State whether or not it has received the approval and sanction of the members of the church generally, as far as your knowledge extends.

A. Well, I have had very little opportunity to know anything about that on account of my absence from the people; I have not mingled with them and I don't know much about their sentiment in regard to it. The little that I have had opportunity to learn about it, I am satisfied that it has met with their approval.

Q. The reason you don't know more about it is because of your absence from home and not mingling with the people?

A. Yes, sir.

Q. Have you ever heard any dissent or disapproval of it by any members of the church?

A. Well, not by more than one person, I think. I think I received a letter at one time from an individual that was rather opposed to it. With th't exception, I don't know of any objections I have ever heard.

Q. What do you understand to be the object and purpose of President Woodruff and his intention in issuing the manifesto?

A. Well, I understood it to be for the stopping of the practise of polygamy in the church.

Q. Do you believe that President Woodruff was inspired of Almighty God to issue that manifesto?

A. I do believe he was inspired to do it.

Q. Do you know whether the officers of the church have so stated to the people—members of the church in their public congregations?

A. I have read.

319 Mr. VARIAN. That is not evidence.

Mr. RICHARDS. No; state whether you know—whether you have been present at any time when it has been stated to the congregation.

A. I don't think I have; I have rea' it, though; read the statements of that kind.

Mr. VARIAN. That won't do.

Mr. RICHARDS. Do you believe it would be pleasing or displeasing in the sight of God for any members of the church to enter into polygamous or plural marriage?

A. Well, I don't *that* know that I am prepared to say whether I believe it would be pleasing or displeasing in the sight of God, but I believe that it would be entirely contrary to the rules of the church for any man to do it.

Q. It would be a violation of the rules of the church?

A. Yes, sir.

Q. Wh't would be the penalty for such violation?

A. Well, I think the penalty would be——. I think that any person doing any such thing would be called in question as to his fellowship, and woul' be liable to be excommunicated from the church.

Q. State whether or not, to you' knowledge, since the issuance of the manifesto, there has been any polygamous or plural ma'riages contracted or entered into *to* by any of the members of the church?

A. Never has been anything of the kind of my knowledge.

Q. State whether or not, since that time, you have in *a* any manner advised, encouraged, or assented to the practise of polygamy or

320 plural marriage by any member of the church.

A. I have not, but I have advised to the contrary.

Q. Do you know of any officers of the church who has advised, encouraged, or assented to that practise during that period?

A. No, sir.

Q. Have you any expectation that the practise of big'my or plural marriage will ever be reëstablished in the church?

A. Well, from my present knowledge, I don't see how it would be possib'; I don't see how it could be possible.

Q. You may explain why.

A. Well, I think that so long as the circumstances continue to e'sist which have brought about the result that it would be impossible and inconsistent to suppose that any such thing could be.

Q. Then you don't expect that any such thing will be?

A. No, sir.

Cross-examination of Joseph F. Smith by Mr. VARIAN:

Q. How long have you been in the Territory since your return to the Territory; when did you return?

A. The last time I returned to the Territory was on the 10th, I think, of last month; it was the 10th of last month, I believe.

Q. You had been absent for some long period of time, had you not?

A. I left this Territory in 1884.

321 Q. From that time until the date you mention, last month, you have, as you say, had little or nothing to do with the people?

A. Nothing to do with the people generally in the Territory at all.

Q. You were absent during all that time, and of course could know nothing ——

A. I was absent the most of the time.

Q. Do you believe that the principle of plural marriage came through a revelation of God to Joseph Smith and through him to this people?

A. Yes, sir; I do.

Q. Do you believe that God has recalled it—revoked it, changed it, as a true principle?

A. I believe that he has suffered it to be revoked; that is, so far as the practise of it is concerned.

Q. No; I am speaking of the principle itself—plural marriage.

A. I don't think that he had revoked the principle at all.

Q. Do you understand that the revelation and law concerning it is to be eliminated from the church book and doctrine?

A. I don't know that I do.

Q. Do you understand that the manifesto applies cohabitation of men and woman in plural marriage where it already existed?

A. I can not say whether it does or not.

Q. It does not in terms, say so, does it?

A. No; I think, however, the effect of it is so; I don't see how the effect of it can be otherwise.

322 Q. You say that you don't see now how it is possible for any change to take place in the attitude of the church and the people upon this question from that announced by President Woodruff, you say you don't see how it is possible, how a condition could arise?

A. Yes, sir; I say that I don't see how it is possible under the circumstances.

Q. And, therefore, you do not now expect that any such change will take place?

A. No, sir.

Q. You assume in making that answer that the laws prohibit it—the human law prohibiting it will continue to exist, do you not?

A. I have no idea as to whether it will continue to exist or not; that has nothing to do with my belief in regard to the condition of the people respecting plural marriage.

Q. Yes, but you gave as a reason for entertaining that expectation, I believe, that you did not now see how conditions could change, did you not; by that you mean how the laws could change, which brought it about?

A. No; I don't mean that; I mean the condition of the people; I mean our standing and position in regard to this principle.

Q. Do you understand th't this manifesto is the result of *of* direct revelation?

A. I understand it to be the result of inspiration upon President Woodruff.

Q. What is the distinction between revelation and inspiration?

A. Well, I regard direct revelation as a species of command,
323 and inspiration as a principle of enlightenment of the mind and the moving upon the mind to do.

Q. Coming inwardly?

A. To do what is done—what might be done.

Q. Revelation comes from the outside?

A. Don't know, but it may be a dic'inction without a difference as far as that is concerned; I draw a distinction, though, in my own mind of the two.

Q. Do you understand from the language of that manifesto that it is a permanent revo*k*ation of the law defining the principle of 'lural marriage?

A. I do consider it a permanent estoppel of the practise of polygamy.

Q. I understand that, but it is the nature of a command to stop the practise?

A. Yes, sir.

Q. But do you understand it as in the nature of an ins'r*i*ation or a revelation to do away with or revoke the law giving the principle?

A. Well, I understand it as a command, or as a revelation, to do away with or revoke the law giving the principle. Direction by the presidency of the church, and the authorities of the church to stop the practice of plural marriage.

Q. And the same authority acting through similar inspiration you believe could recoke this command as well as give it?

A. I presume it could.

Q. And in the event of such action being had, it would receive the same acceptance and obedience that this manifesto would receive?

A. Yes; no doubt it would if all the circumstances were favorable toward it.

324 Q. If conditions changed?

A. If conditions all changed.

Q. If it could be done lawfully?

A. It *it* could be *f*one lawf'lly.

Redirect-examination by Mr. DICKSON:

Q. One of the conditions that you take into consideration in that answer is the public sentiment of the nation, I suppose, is it not?

A. Yes, sir.

Q. With respect to this question, apart from the laws that had been enacted?

A. Yes; that is why I said that while the conditions that now work—the present conditions of things brought it about, exist—I don't see how it is possible to re'stablish the principle.

Q. You think if it was attempted to re-es'ablish it, though there was no law agains', the public sentiment of the nation would bring about the same result that had been reached?

A. Yes, sir.

Q. And therefore you think it never can be re-*r*established?

A. That would be my opinion or impression.

Mr. VARIAN:

Q. Suppose the conditions should so change that public sentiment of the nation through its laws could have no effect within Territorial lines here, would the public sentimetn of the nation have anything to do with the enforcement of the principles of religion here?

A. I think under the circumstances that it would have some-
325 thing to do, in relation to this principle, after the experience we have had.

Thereupon an adjournmentn was taken until this afternoon at two o'clock.

326 TUESDAY AFTERNOON, *October* 20, 1891.

LORENZO SNOW, being sworn as a witness in behalf of the defendants, testified as follows:

Direct examination by Mr. RICHARDS:

Q. What is your age?
A. I was 77 the third of April last.
Q. Where were you born?
A. Ohio.
Q. Where do you reside?
A. Brigham City.
Q. How long have you lived in this Territory?
A. Since the fall of 1848.
Q. What official position do you hold in the church of Jesus Christ of Latter-day Saints?
A. I am president of the quorum of the twelve.
Q. How long have you held that position?
A. About two years and a half.
Q. How long have you been an apostle in the church?
A. Since 1849.
Q. (Showing witness exhibit A, attached to defendants' scheme.) I show you this exhibit A to our scheme; please examine that paper and state whether or not you recognize it?
A. I understand that is the manifesto issued at the time indicated, that is, September, 1890, I believe.
Q. Issued by whom?
A. President Woodruff.
Q. Did this manifesto meet with your approval?
A. It did.
327 Q. State whether or not you were present at the conference of the church—the sixty-first semi-annual conference in October, 1890, when this manifesto was presented to the conference of the church?
A. I was present at that time.
Q. About how many members of the church were present on that occasion?
A. Well, I should judge that probably ten thousand, may be over, may be less; I am not positive as to the number, but I would judge somewhere from nine, ten, to eleven thousand.
Q. Nine, ten or eleven thousand?
A. Yes.

Q. State whether or not the different branches of the church in this Territory and elsewhere were represented, by the officers and members there.

A. There were representatives there, I presume from all parts of the territory.

Q. What action, if any, did the conference take on the manifesto?

A. Well, they approved and adopted the manifesto—its provisions and requirements.

Q. Was that action by the conference unanimous?

A. Well, I saw no opposition vote.

Q. Have you ever heard of any opposition to or dissent from the manifesto by any members of the church at any time?

A. I have no recollection of ever hearing any opposing the manifesto.

Q. You say you have no recollection of anything of that kind?

A. I have no recollection now.

Q. State what you understood to be the object and purpose of President Woodruff in issuing the manifesto?

328 A. Well, I understand distinctly that the object of that manifesto was to entirely stop the practice of plural marriage.

Q. Do you believe that President Woodruff was inspired of God to issue that manifesto?

A. I certainly do.

Q. Was it stated by any of the authorities of the church at that conference of the members of the church that he had been inspired and that it was the will of God to the people?

A. Well, there were some remarks made by President Cannon to that effect.

Q. Has it been to your knowledge stated in other public assemblies of the members of the church since?

A. Yes, sir; I think so. I think in some of what we call the quarterly conferences there were expressions favoring the manifesto.

Q. Do you believe it would be pleasing or displeasing in the sight of God for any member of the church to enter into polygamous or plural marriage?

A. Well, I think it would be very displeasing, because I understand and fully believe that the president of the church was authorized by the spirit of inspiration to issue that manifesto.

Q. And you also understand that by that the practice was forbidden by the church, do you?

A. Most certainly.

Q. State whether or not it is contrary to the law of the church, or would be contrary to the law of the church, for any member to contract plural marriage?

A. Of course it would be contrary to the rules and the law of the church.

329 Q. What would be the penalty for it?

A. Excommunication, I presume.

Q. Do you know of any such marriage having been contracted by any members of the church since the issuance of the manifesto?

A. I do not.

Q. Have you in any manner advised, encouraged, or assented to the practice of polygamy or plural marriage since the issuance of the manifesto?

A. Never.

Q. Has any other officer of the church to your knowledge?

A. Not that I am aware of.

Q. Do you expect that the practice of polygamy or plural marriage will ever be reëstablished in the church?

A. Well, as to that matter, of course I would not pretend to know; I could not penetrate the designs of God, but——

Q. (Interrupting.) I am simply asking for your expectation.

A. Under the circumstances I will answer the question, as you have asked my opinion. Under the present condition of affairs I don't see how they could ever be changed so that that would be introduced—its practice.

Q. Do you believe or expect now that it ever will be reëstablished?

A. Why, I have no expectations that it will.

Cross-examination of Lorenzo Snow, by Mr. VARIAN:

330 Q. Mr. Snow, do you believe the spirit of inspiration to be the same as the spirit of God?

A. Certainly I do; that is, the inspiration from God is the spirit of God; a person may be inspired from the other quarters; he may be inspired from the evil one.

Q. Do you believe in the authenticity of the revelation of Joseph Smith in relation to plural marriage?

A. I do.

Q. As it is set out in some of your church works; I think it is the Book of Doctrine and Covenants?

A. Yes, sir.

Q. You believe that that was given by the Almighty for the guidance of the people?

A. I do.

Q. Do you believe that he has ever repealed that law?

A. Well, perhaps to that last, as to that having been given for the guidance of the people, I think that was a command given; but I don't look upon it as being mandatory to all the people; that is all.

Q. Well, it was permissive, then, under certain circumstances and conditions?

A. Yes, sir; under certain circumstances it was permissive, and under certain circumstances it was mandatory.

Q. Well, with that explanation you believe that it was given by God?

A. Yes, sir.

Q. Do you believe that it has ever been repealed by him?

A. The law repealed?

Q. Yes, sir; as to the principle of plural marriage.

331 A. I believe that the revelation communicated to President Woodruff was for the purpose of stopping its practice entirely.

Q. Do you believe that it repealed the law?

A. Well, I don't know how you would construe that; I am not a lawyer.

Q. The effect?

A. Well, now perhaps I might illustrate my idea in regard to that question. Now, there was a law, and a spiritual law, and a very important one, that was given to Israel on the banks of the Red Sea; that was the law of the gospel; the plan of salvation; that was the original law. Well, the Lord saw proper to withdraw its practice from the children of Israel, and it was some thousand or fifteen hundred years before that practice was allowed. So in regard to this; I look upon it in the same light.

Q. That the practice is ——

A. The practice is entirely——

Q. Is forbidden?

A. Is forbidden.

Q. The practice of what?

A. The practice of the observations of plural marriage.

Q. Contracting of plural marriage?

A. Yes, sir.

Q. Do you believe that the association in plural marriage by those who are already in it is forbidden by this manifesto?

A. Well, I can not say what was in the mind of President Woodruff when he issued that manifesto touching that matter, but I believe, from the general scope of that manifesto, that it certainly embraced the plural marriage, because it is clearly an intention, as indicated in that
332 manifesto of President Woodruff, that the law should be observed touching matters in relation to plural marriage.

Mr. DICKSON:

Q. You mean now the law of the land?

A. Yes, sir.

Mr. VARIAN:

Q. You have been testifying, have you not, as to his belief as to what he did intend in other matters; you say in answer to my last question that you don't know what he had in his mind?

A. No; I don't know what he had in his mind.

Q. Then how do you know it was from inspiration if you don't know what he had in his mind?

A. Well, from his statements here; he stated that that was his intention, whether it was expressed in words or otherwise.

Q. Do you understand that that statement says anything about plural marriage, except the future contracting of it?

A. It says nothing about plural marriage that I recollect.

Q. Except advising against the entering into new relations?

A. Well, advising—it expresses his intention, and then his counsel for all the people to follow the direction of his intention; that is, obey the law touching everything, as I understand, pertaining to the marriage relations.

Q. Does it say so?

A. No, sir; it does not say so.

Q. Then it does not express its full meaning in terms?

A. Perhaps not.

Q. Is there anything else that you understand is expressed but not stated in terms in that manifesto, that are known to those who know the mind of the president?

333 A. I don't remember particularly.

Q. You don't know of anything else, conveyed by that manifesto, that is not explained in plain terms in it?

A. I understand that the intention of that manifesto was confined almost entirely to matters in relation to plural marriage.

Q. You seem to misapprehend, or at least you do not answer the distinction that I am pressing upon you.

A. Perhaps I don't understand you.

Q. I am speaking now of the association in plural marriage between those people who have already entered into it.

A. That is what I supposed; if you make your question plain I will endeavor to answer it.

Q. Well, if it is not plain I will endeavor to make it so. Do you understand now that that manifesto conveys that prohibition, the prohibition against the association in plural marriage between those who have already entered into it, at the time the manifesto was given, as well as a prohibition against the contracting of future plural marriage relations?

A. Well, I do; I thought I had explained that; perhaps I might be unhappy in my expression, but, as I said, the intention and scope of that manifesto was expressive of President Woodruff's mind, in regard to himself and every member of the church, and that was, that the law should be observed in relation to all matters concerning plural marriage, embracing the present condition of those that had previously entered into marriage. Is that a plain answer?

334 Q. Yes; you might have answered it yes, and obviated that.

A. Well, if I was a lawyer——

Q. (Interrupting.) Do you understand, then, that you look upon that as you do upon the revelation that is found in your Book of Covenants?

A. I do.

Q. Do you understand and believe that this should be incorporated into your church covenants and creed from this time on as the revelation is—take its place with the revelation?

A. I understand that that requisition, as expressed in the manifesto, will be strictly and sacredly observed by all the members of the church; but whether that will be incorporated and written and connected with that revelation formerly given to Joseph Smith, in the book, on the same page, or anywhere in the book, or in any other book, of course I don't know.

Q. Well, do you understand and believe that that revelation, as it now appears in the book, is repealed and will be eliminated from church books in the future?

A. I can not tell you.

Q. How?

A. I don't know.

Q. I didn't ask you what you knew; I asked you what your understanding and believe was about it.

A. I have no opinion in reference to that matter.

Q. You say that under present conditions you believe that, as present conditions are, there will be no relapse from this manifesto?

A. That is so.

Q. These conditions you speak of refer to the pressure of law upon the people engaged in its practice?

335 A. Not entirely; there are other conditions.

Q. What other conditions entered into that?

A. Well, perhaps—you wish me to give my ideas or my opinion?

Q. I wish you to answer my question, what other condition?

A. Very good, sir; well, I am under the impression that the Lord had a certain design in that manifesto, and one was to have the people, the Latter-Day Saints, exhibit in their acts and in their sacrifices one of the great principles of the Gospel, and that when a man is compelled to go one mile he should go two, when his coat is taken from him or his overcoat that he should give him his cloak also, and to show the nation that we were willing to sacrifice to the full extent, which I think we have shown, for there have thousands of us gone to the penitentiary, I among the rest for 11 months, and that the Lord through this manifesto was willing to make this exhibit, for the Saints to make this exhibit of their willingness to conform to the principles of the Gospel to the full extent and to give up one of our favorite doctrin's or principles—the principle of plural marriage—and that we have shown this pretty faithfully.

Q. Does not the future conformance with this manifesto depend upon whether the Lord should speak again on the subject?

A. Certainly; that is to say, if the Lord should speak again through President Woodruff, setting aside this manifesto, the obligations

336 would not exist that exist now to conform to it.

A. That is so, if the Lord in the first place——

Q. Well, you have answered my question.

A. Well, I should like to; I think it will suit your use. The Lord gave Joseph Smith a revelation in regard to plural marriage, and from the same authority came a revelation that it should be abandoned—that is, its practice, the same as it was when he gave the children of Israel some important laws. The practice was abondoned for some thousand years, and then he had the authority or the right to give the privilege of those laws being obeyed, and it is received; so in reference to this the Lord has a right to restore the practice of that plural marriage if he sees proper, but it might a thousand years and it might never be.

Q. It might be a month?

A. Yes, it might be ten hours, but I don't believe for a moment that the practice will ever be restored until the Lord comes himself, and then I don't know that it will be restored; it is his own business, that is.

Q. You think, then, that any member of the church who should fail to follow the counsel given in the manifesto would be subject to discipline of the church authority?

A. Most certainly he would.

Q. Even where he believed as you do from the revelation from Joseph Smith and that it was a true principle—would the church discipline one of its honest believers?

337 A. I don't understand you.

(Question read.)

What do you want to discipline him for? I don't understand you.

Q. Well, we will go back. You have stated that, in your opinion, any member of the church who violates this manifesto—that is, who refuses

to obey it, and who contracts a plural marriage—that he would be disciplined by the church. Possibly his offence would be followed by excommunication?

A. It might be.

Q. Now, in the light of your answer I would ask you if that would be so where one of the members of your church, honestly believing as you do in the revelation of Joseph Smith in relation to the principle of plural marriage, and that it was, as you say, mandatory in some instances and permissive in others, should enter into plural marriage——

A. (Interrupting.) Oh, I understand you now distinctly.

Q. Would the church feel authorized to discipline one of its members under such circumstances?

A. I suppose it would.

Q. You suppose so. Is that your best judgment?

A. Yes, sir.

Q. Then the creed of the church depends upon such manifestations made from time to time through its president?

A. Yes; the president stands in that relationship to the Lord, and he sometimes receives revelation in regard to the general interest of the church.

338 Q. Has the church anything to say or has the membership anything to say about accepting and receiving revelations?

A. They can do as they please; they can receive or reject; every member of the church can receive a revelation or reject it.

Q. Now, is it an honest right that a member has a right to reject it?

A. Honest right? Most assuredly it is. A man can go to heaven or the devil, as he pleasess.

Q. And a member of the church can reject it?

A. Yes, sir.

Q. Then every member of the church who was not present at this conference, where it was announced and voted in favor of accepting it, is at liberty to reject it?

A. Yes, sir.

Q. And still retain a membership of the church?

A. When he rejects the revelation?

Q. Yes.

A. He might if he——

Q. (Interrupting.) Under those circumstances, would he be punished by the church for obeying the law that the church had taught all these years, he rejecting this later revelation?

A. Yes, sir; he would.

Q. And yet you say he has a right to use his own judgment about it?

A. Yes; and the church would have the right to excommunicate him.

339 Q. Did the authenticity of this manifesto depend at all upon the vote of the ten thousand people who heard it read in the conference?

A. Did it what?

Q. Did it depend upon the vote or did it depend entirely upon President Woodruff?

A. President Woodruff had the right to 'ssue this mandate or revelation independent of any of the people.

Q. Then the vote of the people cut no figure at all?

A. It cut no figure in regard to the right that President Woodruff had to receive a revelation, but it cut a mighty figure in regard to themselves.

Q. Did it cut any figure as to whether or not that was to be a law of the church from that time on?

A. I don't know that it did.

Q. Don't think it did?

A. No, I don't think that it did.

Q. There was no necessity, then, for submitting that for a vote of the conference?

A. Oh, yes; a great necessity.

Q. What was the necessity?

A. It was to know whether the people were willing to accept the counsels of the Lord as given by President Woodruff.

Q. We will get at it in a little different way. What would have been the effect of the manifesto, or would it have had any effect, if the people there had all voted to reject it?

A. Such a thing never could have happened any more than the sun could be made of green cheese, or the moon.

Q. Why?

A. Because it is impossible. I will tell you why, Mr. Varian:

340 The nature and character of the gospel that the people received gave them a manifestation of its truth and a divine manifestation of its truth, and they had a perfect right, every member of this church had a perfect right, to receive manifestations in regard to the correctness or the truth of the president of the church; that is, of the revelations that he communicates; every member of this church has a right to receive manifestations and revelations by the spirit of God—inspiration in regard to every important matter of this nature, referring to his peace and happiness and force of conduct; so such a thing could not have occurred—such a thing could not have happened.

Q. Well, Mr. Snow, if it was impossible for the people to vote, no, what was the object of submitting it to get the vote, aye?

A. If what?

Q. If it was impossible for a negative vote to have been cast, what was the object in submitting it at all—to ask them for a vote?

A. Well, the same object that Jesus had—that the Father had in sending Jesus into the world when he knew that they would not receive Him.

Q. Well, Jesus didn't submit it to a vote did he, of the people whether they would receive Him, did he; He came without that vote?

A. Well, there was no necessity that He should submit himself to that, but He submitted himself to them, and the Lord knew it before He ever sent him there.

341 Q. There has never *has* been an instance where conference rejected by vote any statement of that kind or of a similar nature made by the president?

A. Not within my remembrance.

Redirect examination of Lorenzo Snow, by Mr. RICHARDS:

Q. President Snow, did President Woodruff have the authority and power to stop the practice of plural marriage without the action of the conference?

(No response.)

Q. I will put another question first; at least I will premise my question with this: I understood you to say that you believed the manifesto to be a revelation to President Woodruff?

A. Yes.

Q. Now, state whether or not President Woodruff had the power through that revelation to discontinue the practice of plural marriage, whether the revelation was presented to the conference or not?

(No response.)

Q. Does not the revelation of plural marriage state that the keys shall be vested in but one man on the earth at a time.

342 A. Yes.

Q. That being so, has the president of the church the authority or not by revelation to discontinue that practice without any action on the part of the church?

A. Certainly he has; that is, as I understand it.

Q. Speaking of the publication of revelations, are all the revelations that have been given to the presidents of the church, published in the book of revelations and doctrine and covenants; have there not been revelations received by President John Taylor and others that have never been incorporated in the book of revelations published by the church?

A. Some have not.

ANTON H. LUND, being sworn as a witness in behalf of the defence, testified as follows:

Direct examination by Mr. RICHARDS:

Q. What is your age?

A. 47.

Q. Where do you reside?

A. Ephriam, San Pete.

Q. What official position do you hold in the Church of Jesus Christ of Latter-Day Saints?

A. I belong to the quorum of the 12 apostles.

343 Q. (Showing witness defendant's exhibit A to the defenda't scheme.) Do you recognize that document?

A. Yes.

Q. What is it?

A. It is the declaration called the manifesto, issued a year or more ago.

Q. Issued in September, 1890?

A. Yes, sir.

Q. Did that manifesto receive your endorsement and approval?

A. It did.

Q. How long have you been one of the 12 apostles?

A. A little over two years.

Q. You were an apostle at the time this manifesto was issued?

A. Yes, sir.

Q. Were you present at the conference of the church held October 6th, 1890, when this manifesto was presented to the conference at the church?

A. I was present; yes, sir.

Q. What action did the conference take upon it?

A. The manifesto was accepted by the church by a unanimous vote of the church; yes, sir.

Q. How many of the officers and members of the church were present on that occasion?

A. Well, the tabernacle was full; I suppose about ten thousand.

Q. Were the different branches of the church here and elsewhere well represented through their officers and members?

A. There were present, I believe, representatives from all over the Territory.

Q. Have you ever heard any dissent from or disapproval of the manifesto by any member of the church?

344 A. I have not, sir.

Q. What do you understand to have been the object and purpose of President Woodruff in issuing the manifesto?

A. I understand that object of the manifesto was to stop plural marriages.

Q. Do you believe that President Woodruff is inspired of God to issue the manifesto?

A. I believe he was inspired.

Q. Was that statement made to the conference at which this manifesto was presented?

A. If I remember right, I think President Cannon stated that he believed that it was inspired of God and that it was the will of God.

Q. Has it been stated in other public assemblies of the church since?

A. Yes.

Q. To your knowledge?

A. I have heard the same statements in quarterly conferences.

Q. In different parts of the——

A. Territory.

Q. Of the Tterritory. Do you think it would be pleasing or displeasing in the sight of God for any members of th' church to enter into plural marriage?

A. I believe it would be displeasing in the sight of the Lord, He having inspired Presi'ent Woodruff to issue the manifesto. It would be contrary to His will to contract marriages which He had forbidden.

Q. Is it contrary to the law of the church?

A. It is contrary to the law of the church.

345 Q. What would be the penalty for any member of the church contracting plural marriage?

A. I think it would be excommunication. The offence would be a 'erious one to assert an authority that only belongs to one man, and which he has not given to any others.

Q. Do you know of any polygamous or plural marriage having entered into or contracted by any member of the church since the manifesto was issued?

A. I don't know of any.

Q. Have you advised or encouraged or assented to the practice at any time since the issuance of the manifesto?

A. I have not.

Q. Do you know of any other officer of the church that has?

A. I have not heard of any.

Q. Do you expect that the practice of plural marriage will ever be established in the church?

A. I have no such expectation.

Cross-examination of Anton H. Lund by Mr. VARIAN:

Q. If you did know of any member of the church who had violated this manifesto, disobeyed it, what would you do?

A. I would have to report the case up to the president of the church.

Q. That would be the extent of your business with it?

A. Yes, sir.

346 Q. And the matter would be decided here, would it, by the president of the church—first counsel?

A. As there has been no case, I don't know.

Q. Well, I don't say there is.

A. I will just explain; I could not say that any other tribunal could handle it; I consider that the president of the church wo'ld handle an offence of that kind.

Q. Do you believe that the manifestation has changed the law of God as indicated by his revelation by Joseph Smith?

A. As far as the practice of it is is; as far as the principle——

Q. (Interrupting.) It still remains right as a principle?

A. I believe so.

Q. But it is not right to practice it now?

A. No, sir.

Q. How is it as to people who have already formed those relations during the year; is it right for them to continue to associate in plural with their wives?

A. The manifesto does not expressly state it, but the president of the church has said it was.

Q. Was that the first time you understood that it was included?

A. I understood his advice for the church from the presidency was to obey the law of the land; that inclused of course——

Q. (Interrupting). Did you understand at the time of the conference tha' tha' was included in it, or was it later?

A. At the time of the conference my mind was more directed to

347 the words of the manifesto than to anything else it might mean.

Q. And at that time you gave it just the meaning that it conveys on its face?

A. Well, when he says, "Obey the law of the land," I began—I thought it would include it.

Q. Let me call your attention to its language: "Inasmuch as laws have been *i*nacted by Congress forbidding plural marriages, which laws have been pronounced constitutional by the court of last resort, I hereby declare my intention to submit to those laws." Now, did you understand at that time thaat that referred to anything but the laws forbidding the going into plural marriage?

A. Well, it says, "Those laws."

Q. Yes, refers to the last antecedent?

A. That takes in all tha laws.

Q. That is the way you construed it?

A. I should say that at the first reading I took it more to be plural marriages; but more careful study of it, I——

Q. (Interrupting.) Did you not understand that the reason for this revelation was because of the present condition, entailing a hardship and misery upon the people?

A. Yes, I believe the Lord saw the condition of the people, and on that account inspired President Woodruff to——

Q. (Interrupting.) For the purpose of relieving them?

A. Relieving the people, yes.

348 GEORGE Q. CANNON, being recalled as a witness in behalf of the defence, testified as follows:

Direct examination by Mr. RICHARDS:

Q. Mr. Cannon, I want to ask you whether the $30,000 that was appropriated for the poor for the present six months represents thirty thousand dollars in actual value, or whether there were any fictitious values or prices represented?

A. It represents $30,000 actual value.

Recross-examination by Mr. VARIAN:

Q. Did you ascertain from any sources since the adjournment the receipts from contribution during the years commencing with 1883 up to 1890, spoken of this morning in the former question?

A. I did not *make* inquiries specially about the receipts up to 1890; I did up to 1887 and 1888.

Q. Is it your general impression that they averaged along through those years about as you have stated this morning?

A. I say that is my impression.

Q. From $500 to $750,000?

A. Yes; in those days, of course, as I said, everything was turned in at a much higher price than its market value.

Mr. RICHARDS:

Q. I understand that the fictitious values were from 500 to $750,000, but the actual cash value was about $200,000?

A. Yes, that is as near as I would estimate it.

349 Mr. VARIAN:

Q. Well, that is confined to those former years, isn't it?

A. Yes, sir.

Q. As I understand you now, it runs from $500,000 to 6 or 700,000 dollars?

A. Yes, sir.

Q. Actual cash value?

A. No. Now, to illustrate the position which we are in about this thing, we collected a band of horses, for which a hundred dollars apiece was credited—they averaged a hundred dollars a piece; they were received at Skull Valley, and all that we realized from that band of horses w's $17 a head. We sold them to a man named Wolley.

Q. What time was that?

A. That was last year.

Q. Was it in the winter?
A. No; it was in the spring.
Q. Did you have feed for them?
It was feed on the range, you know.
Q. It was not sufficient, was it?
A. It was not sufficient.
Q. D*di* you have to sell them to prevent them from star'ation?
A. We were compelled to sell them to save the remnants of them.
Q. To prevent them from dying?
A. Yes.
Q. It was a very hard winter, wasn't it?
A. Yes, it was a very hard winter, but that was not the sole ob-
350 ject of selling them. We thought we had better realize $17 than nothing.
Q. Then it was a question of business, which sometimes comes up in all matters?
A. Yes, sir.
Q. What year was it that the fictitious values ceased to be applied to the contributions?
A. Well, I think——
Q. (Interrupting.) That is, I say, fictitious; you mean by that exaggerated values?
A. Yes, sir; I think it was in 1888 he began—it was 1889 it was discussed by the trustee in trust.
Q. After that it got down to the real value?
A. Yes, sir; that we began taking everything in under a different basis.

Mr. RICHARDS:

Q. What is the present income of the church on the cash basis, or was last year, say, or the year before?
A. Well, I don't know.
Q. Well, you can estimate something near, perhaps?
A. On the cash basis, perhaps three or four thousand.

Mr. VARIAN:

Q. Did you see the inventory returned or know what that showed?
A. Of what?
Q. Of what he asked you about—the receipts of last year?
A. No, but I am familiar, you know, with the general——
Q. (Interrupting.) Are you sufficiently confident in your recollection to say that that is quite near the amount?
A. I think so.
Q. Taken from the returns?
A. I think so.
351 Q. Then the cash value of the contributions, as estimated on their cash value, double last year what they were a few years ago?
A. They have been, as I remarked to you—they have been increasing in value—the contributions have.
Defendants rest.

352 *Plaintiff's testimony.*

J. F. MILLSPAUGH, being sworn as a witness in behalf of the plaintiff, testified as follows:

Direct examination by Mr. RAWLINS:

Q. What is your business or profession?

A. Superintendent of the public schools of Salt Lake City.

Q. How long have you been connected with the public schools?

A. A little more than a year. I was elected to the office which I hold in July, a year ago.

Q. What experience in schools have you had in this Territory prior to that time?

A. I had been engaged in school work seven years before that time, in Utah, in Salt Lake City.

Q. How long have you resided in the Territory altogether?

A. Eight years; I came here in 1883.

Q. During that time to what extent have you visited or examined schools in different parts of the Territory?

A. Well, outside of Salt Lake City, not extensively. I have always looked into the school work of towns, as I visited those towns. I visited most of the towns from Sanpete County north to the Idaho line.

Q. The public schools?

A. Yes, sir; in villages; in the district schools in the counties outside of the villages.

353 Q. In the course of such an investigation or examination of the schools as you have made, will you please state their needs?

A. The needs of the schools are very great in the direction of better buildings everywhere that I have visited. I do not now think of many exceptions; possibly in one or two towns there are fairly good conditions, but in general the needs in villages all over the Territory, so far as I have acquaintance, are very great in the direction of better buildings, both as to size and character of buildings.

Q. Did you find buildings adapted to school purposes generally lacking wherever you had been?

A. Yes, sir; in a very marked way.

Q. What other needs have you observed in respect to school matters?

A. Well, the needs that I have mentioned are what might be considered primary, probably because, of course, all school work is dependant upon good housing. Secondly, I would mention, probably, the need of school apparatus, libraries, and general equipment for doing good school work in the modern sense. Libraries and apparatus generally are quite deficient.

Q. I would ask you to explain to the master the extent to which funds now raised by taxation may go or do go in supplying those needs that you refer to, or what, if any, deficiency you have observed in reference to that?

Mr. DICKSON. I object that it does not appear that he is competent to answer the question; that he has not sufficient knowledge of the revenues of the different schools.

354 A. Outside of Salt Lake City I could not speak of that with any degree of certainty at all. It would only be a venture, and here in Salt Lake City——

The MASTER (interrupting). Wait a moment. The objection of Mr. Dickson perhaps ought to be disposed of. I think perhaps it does not appear yet that he is qualified to speak respecting the amount of the revenues. He has shown some familiarity as to the condition of the schools, but as to the amount of revenue at their command, now, there is nothing to show yet that he has any knowledge upon that subject.

Mr. RAWLINS:

Q. Do you know what the sources of revenue for public school purposes are now?

A. I believe so.

Q. What are they?

A. Taxation entirely—taxation derived from city taxes, county taxes, and general Territorial schools taxes. Of course, ultimately we shall have the money derived from the sale of school bonds.

Q. That is, in Salt Lake City?

A. Salt Lake City.

Q. How are the school funds derived, from taxation, appropriation in the Territory?

A. I think you are getting beyond my ability to speak with certainty.

Q. Not familiar with it?

A. No, sir; it does not come within the line of my business.

Q. You would designate as the special and primary needs of the school suitable buildings, apparatus, and libraries?

A. Yes, sir.

Q. Your observation in respect to the schools has been more extensive here in Salt Lake City than elsewhere?

A. Very much.

Q. I would ask you to state what are the needs here in respect to it?

355 A. The needs that I have mentioned obtain here of course, as well as elsewhere, especially here; the school buildings here are grossly inadequate to the demands that are put upon them. To make that clear, I may say that we had in the public schools last year an approximate enrollment of 6,500 pupils. We had suitable school accommodations for only about a thousand pupils; what I mean by that is suitable accommodations in buildings which are well fitted in point of ventilation, light, sanitary condition in general, for school purposes; we made use of every available building of whatever character, for the purpose of housing these children; but I think nearly 90 per cent of our school accommodations were unfit for the accommodation of the children.

Q. How many children have been excluded from the attendance upon schools by reason of lack of accommodation?

A. None, we have provided seating for them all.

Q. Have you gathered reports as to the status of the parents of the children, as to whether they are Mormons or non-Mormons, in Salt Lake City?

A. Yes, sir.

Q. What are the relative——

A. (Interrupting.) I could not give you that without reference to my books.

Q. You could by examination?

A. I could; I have it exactly.

Q. We would like to have that. When were free schools first established in the city?

A. A year ago last July. The school year began in July—the first day of July; that was the inauguration of the free public schools in the city as well as in the Territory.

356 Q. You may state whether or not the attendance in the schools increased, and to what extent?

A. Very greatly; I don't think I can give you, except approximately, the increase. I think records for the year preceding the inauguration of the public school system showed that the attendance of the city was under five hundred; last year it 6,368, I am quite sure—nearly 6,500.

Q. Nearly double then?

A. Nearly double.

Mr. VARIAN:

Q. Is that 1890 your are speaking of now?

A. 1890; yes, sir.

Mr. RAWLINS. Now, how did you provide accommodations for these?

A. We rented a large number of buildings and rooms.

Q. Private dwelling houses?

A. Some private dwelling houses and stores and exposition buildings with unplastered walls; everewhere that we could secure rooms for 35 or 40 children we did secure them.

Q. Were you able to provide proper sanitary conditions?

A. No, sir.

Q. Do you know whether that fact has been injurious to the life of the chilren?

A. I could not point many illustrations of it, but of course in a general way it has been injurious to them, it could not be else—other than injurious; but I could not assign nor could anyone assign any particular case of sickness to causation of that kind. We can suspect it strongly.

Q. I will ask you to state whether the lack of proper sanitary conditions—air and ventilation—are detrimental to school work and whether the children make the same progress?

357 A. No, sir; they do not; it is very detrimental to school work, as well as health.

Q. You gave the attendance for 1890; what has it been for this year?

A. It has very greatly increased, so far as we can judge at the present time. The attendance, taken at corresponding times of the two years, shows a very great increase the present year.

Q. Could you give about the percentage of increase?

A. I don't think I can; I could only hazard a guess about it; I should think the increase had been 15 per cent over last year; I could tell you definitely if I had my papers and record here.

Q. Are you able to adopt and carry out in practice anything like a graded system of schools under present conditions?

A. Imperfectly only; we are attempting it; we are struggling in that direction; but our attempt is a very imperfect one, because of the lack of accommodations. I may illustrate the lack of accommodations in this way: School authorities and architects, whose business relates entirely to

the construction of school buildings, give as a proper floor space 15 square feet per pupil. We are obliged in many cases to get along with six square feet of floor space.

Cross-examination of J. F. Millspaugh by Mr. DICKSON:

358 Q. The population of this city has increased very rapidly the last few years, has it not?

A. That is my understanding; that is shown by the school census.

Q. The schools that you are speaking of particularly are the free common schools in this city only?

A. Exclusively.

Q. It is a fact, is it not, that the people of the city, during the present year, voted for the issuance of $600,000 in bonds, to be applied to the needs of these common schools?

A. Yes, sir; with this exception. $150,000 of this amount it is proposed to use for reimbursing those who pay a special tax, that the courts declared legal last year.

Q. Does that amount to $150,000?

A. Approximately, I think, it is something like this. I believe $85,000 of that amount was paid, and quite a large amount of the tax was not paid. In case those who were assessed this special tax come forward and pay the amount which they were assessed it will amount to about $150,000, somewhere approximately that; and the board issued these bonds with the understanding that the $150,000 should be returned to the taxpayers.

Q. That money that was paid in on that tax never went into the hands of the school board, did it? It was retained by the county tax-collector, was it not?

A. I think $85,000 went to the—

Q. (Interrupting.) Was any of it paid over to the school board of the city?

A. That I am unable to say about.

359 Q. Don't know that it was retained by the county collector of taxes, and that he has reimbursed those now under the decree of the court who paid their taxes under protest?

A. No, sir.

Q. Didn't know as to that?

A. No, sir.

Q. At all events there were $600,000 voted by the people in bonds to be issued, to be applied to the benefit of the common schools of this city?

A. Yes, sir.

Q. To be applied, of course, in relieving the very needs that you have spoken of?

A. Yes, sir.

Q. Now, apart from the common schools, isn't it also a fact that every Christian denomination, or almost every Christian denomination, in the city has a sectarian school?

A. Yes, sir.

Q. For the education of the children of that faith, or any others who may choose to attend?

A. Yes, sir.

Dr. JOHN R. PARK, being sworn as a witness in behalf of the plaintiff, testified as follows:

Direct examination by Mr. RAWLINS:

Q. You are president of the University of Deseret, Dr.?
A. Yes, sir.
Q. How long have you occupied that position?
A. Since the spring of 1869.
Q. How long have you been a resident of the Territory?
A. Since 1864.
Q. Continuously from that time until the present?
A. Yes, sir.
Q. During all that time have you been engaged in education?
A. I have.
360 Q. When did you become connected with the university?
A. In March, 1869.
Q. Prior to that time were you engaged in teaching the district schools?
A. Yes, sir.
Q. Have you visited the different parts of the Territory or the schools in the Territory?
A. I have.
Q. How many times?
A. I traveled three years in the interest of the superintendent of education—three summers.
Q. What parts of the Territory?
A. That is, during the time that the university was in vacation.
Q. What years were those?
A. I am not positive; I think 1884, '5, and '6. That is my best recollection.
Q. What schools in the Territory did you visit during those years?
A. I visited the schools in the south and north and traveled all through the Territory; not, however, in the same year.
Q. During the three years covered all the schools in the Territory, did you?
A. Yes, sir; most of the schools.
Q. Did you visit each school district in the Territory?
A. I think not; but we endeavored to visit all we could in the limited time we were engaged in traveling.
Q. What deficiencies did you notice, if any; what wants were manifest to you in the course of your visits to the schools in those years?
A. One very prominent one was the absence of special school-
361 houses. At the time I visited the schools of the Territory most of the district schools in the distant parts of the Territory were held in the meetinghouses—houses of religious worship—and these were often very rude log buildings or adobe buildings.
Q. You say in the majority of cases, in the outer settlements, the schools were held in the meetinghouses?
A. Yes, sir.
Q. Those were meetinghouses or places of worship for members of the Mormon Church, were they?

A. Yes, sir; that is the case, because in nearly all the settlements *were* a majority were members of the Mormon Church—the majority of the population were members of the Mormon Church.

Q You may state, from the information which you gathered through the course of your visit, whether or not the population was not almost exclusively members of that church?

A. Yes, sir; they were almost exclusively members of the Mormon Church.

Q. And have utilized the same building for church purposes and school purposes?

A. Yes, sir.

Q. Can you give us about the relative proportion of the cases where the buildings were used for both of these purposes throughout the Territory?

A. Well, it would be difficult for me to do, because there were very few exceptions—that separate schoolhouses were built?

Q. Perhaps you can recollect about the number of cases where you found a separate schoolhouse erected and adapted for school purposes?

362 A. They were almost exclusively found in the larger towns of the Territory, such as Salt Lake, and Provo, Ogden, and Logan; there were a few separate schoolhouses—houses devoted exclusively to educational purposes, I think in Davis County, outside of the towns, and I can not call to mind any in the south at that time.

Q. Any south of Provo?

A. Any south of Provo, yes, sir; of course my memory now at this period is a little defective on those things.

Q. How were these buildings furnished or fitted, mainly for meeting-house purposes, or church purposes, or school purposes?

A. Generally for meetinghouses—for religious services.

Q. They were furnished so as to be more adapted for religious worship than for schools?

A. Yes; in quite a number of cases, however, the buildings were fitted up with wall desks—desks against the wall for the accommodation of pupils.

Q. Did you find any case where these buildings were furnished with regular seats for pupils, such as they use in schoolhouses?

A. I don't remember of any cases now, in the rural districts.

Q. So that if I understand you rightly, outside of Salt Lake, Ogden, Provo, and Logan, there were no school buildings adapted and furnished exclusively for that purpose?

A. There were very few; yes, sir.

Q. You mentioned a few, I believe, in Davis County?

A. Yes, sir; that is all I can call to mind.

Q. How about school apparatus?

363 A. There was very little school apparatus.

Q. And libraries?

A. No libraries.

Q. From your observation and your experience and your travels through the Territory at that time, what would you say was the special needs of schools throughout the Territory from the conditions as you then found them?

A. I should say the first and most urgent need was good schoolhouses adapted specially to school purposes.

Q. And next in importance to that, what?

A. Good furniture; that is not included in the building; good schoolhouses and good furniture; and the next, probably, would be good apparatus, school apparatus properly selected, and the next a district library, if it is properly control'ed.

Q. What did you mean by a district library?

A. One that can be used by every one in the district, whether they are school children or not. I qualify this statement, because in some cases a great deal of money has been expended for apparatus that was not adapted for the school for which it was bought, and I know of cases where school libraries have been established and soon dissipated for the want of proper management and control.

Q. Do you know why proper schoolhouses have not been erected?

A. Yes, sir; I think I do.

Q. What was the reason?

A. It is because the people had not the means to erect both schoolhouses and meetinghouses, and have accommodated themselves to one house for both purposes as a matter of economy.

364 Q. Would you consider from your observation at that time that this need of schoolhouses wa- urgent in the interest of education in the Territory?

A. Yes, sir; that is, I say urgent because it didn't really satisfy the desires of the people then in their desires to educate their children. They would, as I understand them, have built better schoolhouses and furnished better accommodations if they could have afforded to do so.

Q. By reason of the lack of means that they didn't do so?

A. Yes, sir.

Q. Not the lack of disposition?

A. No, sir.

Q. Are you familiar with the amount of funds provided in the Territory for school purposes under existing laws?

A. I am not.

Q. Or with its distribution?

A. No, sir; I am not.

Q. You could not say, then, as to whether those funds are now adequate for the purposes of supplying the means in the way of schoolhouses?

A. I could not.

Q. The school population of the Territory outside of Salt Lake and Ogden, what proportion of it would you judge from your acquaintance with the Territory and its people, the children would be of Mormon parentage?

(Objected to; question withdrawn.)

365 Cross-examination of Dr. John R. Park, by Mr. DICKSON:

Q. Are the lack of school facilities in those years, in all instances, due to the inability of the people to provide better buildings, or lack of disposition in some instances, would you judge from your observation?

A. Well, as a rule, I should say it was for the lack of ability, lack of financial means.

Q. Were not there many sections that you visited or a number of districts where the people were in comparatively comfortable circumstances, having a little property where they could afford to do better if they had the disposition, or if the trustees had the disposition to enforce the law of special assessment?

A. Well, there may have been such instances, but I can not call any to mind. It appeared to me that the people were doing about as well as they could in the matter of education.

Q. Now, with reference to the buildings; they were used both as schools and meetinghouses. Do you know to whom they belonged, whether to the members of the church or to the school districts?

A. No, sir.

Q. Don't know how that is?

A. There was no division at that time.

Q. You don't know to whom they belonged?

A. I do not; no, sir.

Q. Whether to the church or to the school district?

366 A. No, sir.

Q. Whether the school was using the meetinghouse or whether the church was using the schoolhouse; don't you know which it would be?

A. No; I could not say positively.

Q. Have you familiarized yourself with the condition of the dist'ict schools throughout the Territory since the times you have mentioned?

A. No, sir; not intimately.

W. M. STEWART, being sworn as a witness in behalf of the plaintiff, testified as follows:

Direct examination by Mr. RAWLINS:

Q. How long have you lived in this city?

A. I have lived here all my life.

Q. How much of your life have you been *a*ngaged in education?

A. Ten years.

Q. Where and in what capacities?

A. I acted as superintendent of schools of Salt Lake County, including Salt Lake City, for five years, and Salt Lake County outside of the city for one year; altogether six years.

Q. What years were those?

A. I was elected in 1885 and served as superintendent of schools until the last election in August.

Q. What is the extent or has been the extent of your acquaintance with schools in this county?

367 A. Well, I visited them twice.

Q. What is your position?

A. I am principal of the University of Deseret.

Q. You visited each school in the meantime twice each year during that time?

A. Yes, sir.

Q. And you are thoroughly familiar with the schools of this county?

A. Yes, sir.

Q. Have you visited schools elsewhere in the county?

A. I have; yes, sir.

Q. To what extent?

A. I visited schools in Utah County and I have visited schools north, I think north; I think some in Davis County, some in Weber County, and some in Cache County.

Q. How did you find schools in this county and in other places where you visited provided as to schoolhouses, apparatus, or libraries—what did you observe as to their deficiency or not?

A. The great deficiency that I have observed was in school buildings.

Q. What was the character of the buildings that you generally found?

A. They were most of them unsuitable for school purposes, buildings erected in very early times for meetinghouses; of course, there were some few good schoolhouses.

Q. How were these primitive structures or meetinghouses furnished or fitted up?

A. Well, usually they were furnished with wooden desks; mostly all of them in this county had desks.

Q. In the other counties, how was it?

368 A. Well, I would think the common schools of Salt Lake County were about like schools in the other counties that I visited, so far as furnishing was concerned—rather in advance, if anything.

Q. Outside of the schools devoted exclusively for school purposes, were the houses furnished in such manner as to be better adapted for meeting houses or school purposes?

A. Better adapted for meetinghouses.

Q. From the manner in which they were furnished would you say the principal object was meeting or school purposes?

A. Well, there was an effort made; the church members as well as the children of the schools. There were desks, but the building, of course, was not constructed for school purposes at all.

Q. How many school buildings erected and furnished expressly for school purposes did you find in Salt Lake County?

A. Did you mean the last year of my——

Q. (Interrupting.) Well, during the years that you——

A. (Interrupting.) Of course, new buildings were put up last year, I think, in Salt Lake County. I can safely say there were probably a dozen.

Q. How many school districts or schools were in the county?

A. There were about 59 school districts—59 to 60 school districts in Salt Lake County.

Q. And about a dozen schoolhouses?

A. Yes, sir; that I would say were suitable for school purposes.

Q. And how was it outside of this county where you visited; what was the relative proportion?

369 A. Well, in Ogden they have a good central school—a good building in Ogden; and of course in the smaller towns and villages the buildings were repaired—were not suitable for school purposes generally; at Payson where I visited they had a very nice school building.

Q. Do you know why suitable schoolhouses have not been erected and maintained?

A. Well, I think it has been due to the fact that it has been a burden upon the people to assess a direct tax. The law provided that a tax of two per cent could be levied; of course some of these schools were free. Free schools have been running ever since I have been superintendent of Salt Lake County, but they were maintained by a direct taxation from the people, and frequently taxes of two per cent were levied in order to furnish money to pay the teachers, and they have to furnish apparatus, and furniture, etc.

Q. And there would be nothing left for the schoolhouses?

A. There would be nothing left for the schoolhouses; someitmes an attempt would be made to build a schoolhouse, and the trustees could not get sufficient funds to build a suitable schoolhouse without taxing the people for several years at the rate of two per cent.

Q. So that it was the lack of means and of ability?

A. In my judgment, yes, sir.

Q. Of funds to provide such buildings?

A. Yes, sir.

Q. That is, each district had a right to vote a tax of two per cent.

A. Well, each had a right to vote a tax of two per cent.

Q. That was the maximum?

A. Yes, sir.

370 Q. Not to exceed two per cent?

A. Not to exceed two per cent. And the trustees had the right to vote independant of the voters—at least to assess the tax of ¼ of one per cent.

Q. Do you know the present method of raising funds for the separate use of the schools?

A. Yes, sir.

Q. And the method of its distribution?

A. Yes, sir.

Q. Will you explain that?

(Objected to. Objection overruled.)

A. There is a territorial tax of three mills; this tax is on all the taxable property in the Territory, and is distributed according to the school population. The Territorial commissioner of schools apportions it among the various counties, and the county superintendents of the schools apportion it among the districts according to the school population—based on the school popuiation. At present the law provides for a county tax of two mills. The county superintendent reports to the county court the amount of funds needed for paying the teacher and furnishing the supplies for the school; and that tax can be as high as two mills. In Salt Lake County last year I recommended a tax of 1½ mills; that would bring to Salt Lake County something in the neighborhood of $90 for the payment of teachers; and then the district may levy a tax of one per cent, and again the district may bond as high as two per cent.

371 Q. Well, you may state whether, in the operation of this law, sufficient funds are raised to provide suitable schoolhouses.

A. Well, the law has only been in operation one year. I think sufficient funds can be raised under that now, if the people will vote the tax.

Q. Assume that burden?

A. Yes, assume that burden.

Q. What would be the maximum amount of taxation for school purposes in case it should all be levied up to the limit?

A. The Territorial tax of three mills, the county tax of two mills, that would be five mills, and the district tax of one per cent, and then the bonding of two per cent—3½ per cent.

Q. I suppose that bond would be issued once, and that would exhaust the borrowing power?

(Objected to.)

A. I don't know.

(Objection sustained.)

Q. Now, what would you say in the law and your experience and observation would be the special needs of the schools of the Territory?

A. I would say, considering the law at the present time and the situation, that school buildings——

Q. Were the first and primary thing?

A. Yes, sir.

Q. Would you say that was urgent or not?

A. I should think so; yes, sir.

Q. What is the sanitary condition of schools at the present?

A. Well, it is very poor indeed. Of course there are old build-
372 ings, buildings that are not suitable for school purposes usually, and the sanitary conditions are anything but favorable to health usually.

Q. Under the present law, you give it as your opinion that the fund would be sufficient. Do you mean by that sufficient to defray the current expenses and maintain school and apparatus, including school buildings?

A. Yes, sir; if the people would vote the taxes, and I would say there is a difficulty in regard to the bonds; they can sell the bonds at the rate placed on them by the law. I will say that my report gives the information regarding city schools and the county schools, if that will be any benefit—it gives the percentage of attendance at schools, etc.

Q. Have you the percentage of attendance at the different schools?

A. Yes, sir; I have of the year that I was superintendent of the schools of Salt Lake City and Salt Lake County.

Q. What was the school attendance?

A. It is divided into Mormon and non-Mormon.

Q. How many Mormon and how many non-Mormon?

Mr. VARIAN. What year is that?

A. That is 1890.

Mr. DICKSON:

Q. For the whole county or the city?

A. For the whole county; I can give you for the city.

Mr. RAWLINS. Give us for the whole county, the Mormon attendance and non-Mormon.

A. Mormon enrollment for Salt Lake County, 6,057; non-Mormon attendance, 1,131.

373 Q. That is, in the county?

A. Yes, sir.

Q. That includes the city and the present school population—or at least the percentage of the school population attending the schools; the Mormon 60 per cent, non-Mormon 30 per cent.

Q. That is in the county?

A. Yes, sir.

Q. Now, the city enrollment for that year is about 4,300 in round numbers—over 4,300?

A. Yes, sir.

Q. And what percentage of Mormon outside of the city, and Gentiles; what is the relative number?

A. In attendance you mean, or population?

Q. In attendance at school?

A. Well, I have not figured that up; I can tell.

Q. Have you any objections to leaving that report with us?

A. No, sir.

Mr. RAWLINS. I would like to offer that in evidence.

Mr. DICKSON. We object to it as incompetent and irrelevant.

Q. That report was made by you?

A. Yes, sir.

Q. The official report of the commissioner of schools?

A. Yes, sir.

Cross-examination of W. M. Stewart by Mr. DICKSON:

374 Q. Did I understand you to say that the city was unable to dispose of the bonds, that were voted this summer for schools, the six hundred thousand dollars?

A. No, sir; I said that if the districts would dispose of the bonds, they could raise sufficient funds to build school houses, but I do not think the bonds could be disposed of.

Q. Do you think the bonds of this city could be disposed of?

A. I have no judgment to exercise in regard to that; I don't know.

Q. Do you know of any effort being made to place the bonds of the city without success?

A. I know of an effort being made by the trustees; at least they investigated the matter.

Q. In this city?

A. No, sir; not in this city.

Q. Just pay attention to the question. Do you know of any attempt being made to place the bonds of any school district in the Territory, which has failed?

A. No, sir.

Q. How did you get the information by which you are enabled to determine the percentage of scholars in attendance who are Mormons and who are non-Mormons?

A. I got my information from the school trustees.

Mr. DICKSON. We object to it as incompetent and hearsay.

(Objection sustained.)

Q. This is not a report made to you by the trustee, is it?

A. Yes, sir.

375 Q. It is your own report, isn't it?

A. It is my own report, taken from the trustees'—copies of the reports of the trustees.

Mr. DICKSON. I make the objection that the original reports are the best evidence.

(Objection overruled; exception taken.)

Mr. RAWLINS:

Q. Were these reports made upon forms prescribed by the Territorial commissioner?

A. Yes, sir.

Mr. DICKSON:

Q. This is a report compiled by you?

A. Yes, sir.

Q In which you undertake to state the percentage of Mormon and non-Mormon children attending schools in this country, as I understand you?

A. Yes, sir; as required by law.

Q. Have you any information yourself as to the percentage and Mormon and non-Mormon children in attendance?

A. Only as I obtained it from the school officers—the school trustees?

Q. Of the various districts?

A. Yes, sir.

Mr. RAWLINS:

Q. Do you know of cases in which the school trustees have investigated the question as to whether they could float or sell their bonds to be issued under the law?

A. Yes, sir.

Q. What t'ey found out in respect to that?

A. Well, they reported to me that——

(Objected to as incompetent and hearsay.)

376 Q. Was that in the form of an official report?

A. No, sir.

Q. Were the bonds issued?

A. No, sir.

Mr. DICKSON:

Q. There was no at'empt to issue them, was there?

A. Yes, sir.

Q. Was there any effort made to float them in the market?

A. No, sir.

P. L. WILLIAMS, being sworn as a witness in behalf of the plaintiff testified as follows:

Direct examination by Mr. RAWLINS:

Q. Mr. Williams, you were Territorial commissioner of schools at one time, were you?

A. Yes, sir.

Q. During what time did you act?

A. I was appointed in April, 1887, I think, soon after the law was passed providing for that office, and, as I now remember, continued to act two years—I think just two years.

Question. You were appointed by the Territorial supreme court?

A. Yes.

Q. What duties did you perform in the way of gathering statistics during that time?

A. Why, I prepared some forms to obtain the data that was required by the act of Congress creating the office in connection with the require-

ments of statistical information, under the Territorial law, preëxisting; the forms I prepared were the best I could adopt to collect our
377 information required by both the Territorial and Congressional law, and distributed those through the county superintendents of the various counties with official instructions to distribute them in turn by the county superintendents to the several school districts, for the purpose of collecting the information that the law called for.

Q. And did you get back the forms furnishing the information that was required?

A. I did, as shown in my report, with here and there an exception as to a district, or in one or two instances, one year I think a failure to receive county reports; and in some of the counties there was a failure in a very few instances to get returns from all the districts in the county—that is, some of the outside districts.

Q. Did you get those data or reports more than once?

A. Twice, as I remember it; and I think my reports show two years.

Q. Are both reports embodied in the pamphlet that you have there?

A. Yes; I find that there is printed here a report made in January, 1888, to the Territortial legislature that embodied statistics of this time; then this act of Congress required an annual report to be made to Congress through the governor, and at the end of 1888 I made out that annual report to Congress, which contained the statistical information collected during that year, and as a part of that report I attached a copy of my report made at the beginning of the year 1888 to the
378 legislature, which contained the statistical information collected through the year 1887, so that this pamphlet——

Q. (Interrupting.) That is your official report?

A. Yes. This contained a copy of two official reports, one made in the beginning of 1888 to the Territ*iroail* legislature and the other at the end of 1888, made to Congress, and they are both published in this pamphlet, as appears.

Q. This is correct, based upon the reports which you received?

A. Yes; I h'd a copy of that published. As it purports to be, and I looked it over some time ago, and I have no doubt about its being an accurate copy of both my reports; I discovered no discrepancies.

Mr. RAWLINS. We offer this in evidence.

Mr. DICKSON. I do not object to the statistical information, but I object to all else, that is, the comments of Mr. Williams upon the school system here.

(Objection overruled, and exception taken.)

Mr. RAWLINS:

Q. Did you visit the schools of the Territory while you were commissioner?

A. Not very extensively; I did to some extent.

Q. To what extent did you?

A. Well, I visited a number of the schools in this city and a few outside, and a few outside, I think, of the city in the county, and a few visit' in W'ber Connty. I am not quite clear now whether I visited the
379 schools in Utah County. It seems to me I did on one occasion there—two or three *os* schools in Provo.

Q. In the course of such investigation and examination of schools as you made, did you observe in what respects they were deficient or 'hat they most *n*eeded?

A. Yes; I gave attention to that subject so far as I had opportunity to in the visits that I made.

Q. What did you find?

A. Oh, there was a general lack of suitable schools buildings sufficient in size to acco'modate children comfortably. Where there were buildings, they were generally ill-adapted to the uses of comfortably housing of schildren, affording them the room that was necessary. I thought there were greater defects in the schools building, as far as I observed personally, then in the fitness of teachers to impart instruction.

Q. From what cause did this deficiency in school buildings and ad*a*quateness arise; for lack of funds, so far as your observation extended and enabled you to judge?

A. Well, that was the complaint of the school officers in the several districts, that there was a lack of funds and difficulty of raising by taxation an ad*a*quate amount necessary to build suitable school buildings. There was some building going on at the time; not much.

Q. You had the apportionment of the funds arising from Territorial taxation to the different schools?

A. Yes.

Q. How was that apportioned?

A. Well, that was proportioned according to the school population of the last preceding school census, as I remember the requirement of
380 the law.

Q. Would that fund, as distributed, be sufficient after defraying the expenses of school-teachers and providing apparatus and heating school buildings; to erect schoolhouses and furnish them?

A. No; it only supplied about one-half at the time of the necessary funds to pay the school teachers employed, and by the law, as I remember it, it was to be devoted wholly to the payment of teachers; I know it was inadequate to pay the teachers then employed in the Territory.

Q. Was there, or is there, any other fund than that arising from taxation out of which to provide the schools of the Territory.

A. None whatever that I have any knowledge of.

Q. What is the condition of the public lands dedicated by Congress for the support of schools of the Territory?

A. Why, as I understand it, they simply exist as a reservation.

Mr. DICKSON. That is a matter of law.

The WITNESS. That is a matter of law, I will suppose; that is the way I understand the fact, that there has been no provision made at all whereby the Territory can at this time, or ever has in the past, derived any benefit from those lands.

Q. Assuming that those lands might become available, how are they located or what is their character, if you know?

A. I am not acquainted with them.

Q. You are not familiar with them?

381 A. I don't think I could impart any information on that subject.

Cross-examination of P. L. Williams by Mr. DICKSON:

Q. Did you report upon the condition and conduct and management of the Catholic schools in the Territory?

A. What I did is shown in those reports.

Q. Well, don't you remember?

A. My recollection is that I was not able—didn't get sufficient data to make any statistical statements in reference to those schools.

Q. I am not speaking of statistical.

A. I know I never had the statistical information from the Catholic schools.

Q. Did you make any reports upon any of the schools except the public schools and the Mormon schools?

A. Well, if I remember rightly, the reports from these private schools were exceedingly meagre, and I received them from only a very few, and I do not recal' from memory now what summarizing, if any, I made from the reports I got.

Q. Isn't it a fact that in your report (speaking now apart from the statistical information therein contained) that you have nothing to say upon any schools except the district schools and the Mormon schools?

A. Yes; I remember in one of these reports I had something to say as to all these church schools; subjected myself to a great deal of
382 criticism from Brother Benner and one or two others who were connected with those schools on that account; I remember that fact; I think it was by way of comment on those schools.

Q. I find nothing in this report.

A. My recollection is that that is the later report that was submitted, published in the lat'er part of that pamphlet.

Q. I am speaking of the speech or the address to Congress, or whatever it may be called. All you criticise or refer to in all the schools except the district schools and the Mormon schools?

A. My recollection is that the speech simply applies to the condition of the public schools, deeming them substantially Mormon schools at the time.

Q. I speak of the report where it ends, signed P. L. Williams, commissioner of schools for Utah; commencing on page one and ending on page eight.

A. The matter that you want, I think——

Q. (Interrupting.) No; I am confining my attention to those in this address.

A. Permit me to explain. This adress is the one made to Congress, and in that I refer to and make a part of it a previous report, that is also published in here, and commences at page 15, and my name is signed again there on page 24. That I think contains the speech that you have reference to.

Q. Well, it the part that contains the objectionable matter.

A. Well, I suspect there is some objectionable matter to you from the same standpoint in the other report as well.

383 Redirect examination of P. L. Williams by Mr. RAWLINS:

Q. (Showing pamphlet to witness.) I will ask you if that is the part that you refer to?

A. Yes, sir; that is the part of the first report that I refer to, with reference to the private and denominational schools.

(It is admitted by counsel for the respective parties that the two papers presented by counsel and marked respectively Exhibits 3 and 4 are the reports made by Jacob S. Boreman, commissioner of schools for Utah Territory, to Congress.)

Mr. DICKSON. The passages marked on page 5 of Exhibit C we object to as incompetent, being declarations outside of the duties imposed by law upon the superintendent.

The MASTER. The reports are in for whatever purpose they are proper to be used for.

(The report of Mr. Stewart, above referred to, was marked Exhibit A. The report of Mr. Williams, above referred to, was marked Exhibit B. The reports of Mr. Boreman, above referred to, were marked, respectively, Exhibits C and D.)

Mr. VARIAN. Here is the original decree in this case; we want it identified.

Mr. DICKSON. It is already a record in the case.

Thereupon an adjournment was taken until to-morrow morning at 10 o'clock.

384 WEDNESDAY A. M., *October* 21*st*, 1891.

FRANK H. DYER, being sworn as a witness in behalf of the plaintiff, testified as follows:

Direct examination by Mr. VARIAN:

Q. You were formerly receiver in this case. I want to call your attention to the matter of the compromise that was made with the church authorities, with a view to designating precisely the several amounts in money that were received for certain things, and perhaps that report will show it [handing paper to witness].

A. Well, do I understand by this that you simply want to identify this report?

Q. Well, I would like to have you look it over, and if the report shows fully the matter, why that will be sufficient.

A. Yes, sir; that covers it.

Q. Can you state the precise amount received in money for a portion of lot 5, in block 75?

A. Well, I can not from memory.

Q. It is the $42,000.00 item. Look at the item of $157,000.00 and state what that is made up of.

A. Well, it is not divided up here; the $157,766.15 is made up of the different compromises made at one time.

Q. We want to get the different amounts that go to make that up.

A. Don't you find it in any other reports of mine?

Mr. VARIAN. The clerk has only brought up a petition for settlement here.

A. That ought to give it. This petition gives the amounts exactly as they were; I can't state any amount from memory.

385 Mr. VARIAN. Well, I suppose it is the fact the judgment of the court was in accordance with that petition?

Mr. DICKSON. Yes, I understand so.

WITNESS. Yes, sir; that is the fact, except as to the $75,000.00. That petition, as I remember it, didn't ask for authority to compromise the personal property item; that was done afterwards and approved by the court later on.

Mr. RICHARDS:

Q. Is this the report that you made to the supreme court, which was afterwards approved by them, of the compromise?

A. I understood that Mr. Varian handed me—that it was the petition which I made to the court, asking for authority to compromise. That being so, that gives the amounts just as they were.

Mr. VARIAN:

Q. There was no change in the order from that?

A. No, sir; none whatever.

Q. Now, do you recollect about the sheep—I don't recollect whether they were included in that or not?

A. No, sir.

Q. What was the transaction in relation to the sheep?

A. The sheep were turned over to me as receiver, as certain property, 30,000 head; a portion of those were leased. Well, they were all leased to different parties, the greater part of those to Mr. Pickard.

Q. Well, was there any money paid in lieu of sheep that were not delivered?

A. No, sir. Well, I say no, sir—there was a few, but it didn't amount to anything at all.

386 Q. That is in the $75,000.00 item?

A. Yes, sir; that is my recollection, that there were a few inventoried in, but are in different stakes, one or two here or there, but so few that it didn't cut any figure at all.

Q. Those notes that were turned over to you were subsequently paid, the same as any other of these accounts?

A. The only note as I remember it now that were turned over to me were for the theatre, and those were subsequently paid.

Q. Clawson's note and Mr. Young's note?

A. Yes, sir; and Sharp's.

Q. Now, were the statements contained in this petition and that report, taken together and with the sheep, and the $75,000.00 compromise, including all the personal property that come into your hands at that time, was there anything else except as shown by that petition?

A. Well, the gas stock was levied previous to this, if my memory serves me right.

Q. What we want to get at is the general result. There were the other notes—the gas stock, the street railroad, the money on account, and this property that had been sold which was paid over to you?

A. Yes, sir.

Q. The sheep, and the compromises for the perishable property in the different ecclesiastical stakes?

A. Yes, sir; that is all.

Q. That is all the personal property that had already went into this fund?

A. Yes, sir; that is all I can remember of.

387 Q. What is the present value of the gas stock—the 800 shares, I believe?

A. Well, that is a question. It has no market value, it never was on the market. I believe that you could fix the value of it perhaps, as well as I could by the fact—that city advertised there a year ago you remember, and they had some bids.

Q. What were those bids?

I believe they refused $160.00 a share for their stock.

Q. Well, it has no such value now has it?

A. No; I don't think it has. Of course at that time, as is well none, there was a boom here and all prices were inflated, but I don't believe the gas stock would bring that much now on the market, I am sorry to say, for I have got some. I don't believe it is worth as much as it was then.

Q. Would it bring more than par?

A. Oh; it would bring more than par, it is worth at least $80,000.00; that is I will give that much for it.

Q. How much more would you give?

A. Well, not much more. I am not prepared to say.

Q. Would you give 10% advance?

A. I would give that much for it.

Mr. RAWLINS. It is worth $130.00 a share isn't it?

A. Well, I don't know whether you could get that much for it; money is very close just now. It is doubtful whether you could get that much for it or not—very doubtful. It ought to be worth that.

388 Mr. VARIAN:

Q. Would ask you for the details of the business concern—I suppose you know something about it. What is your best judgment as to what the market value would be, if it were put upon the market, and the condition of the company made known to the market?

A. Well, my judgment is, that it is worth at least $125.00 a share.

Q. Deseret telegraph stock; have you any judgment to give on the value of that?

A. Well, sir; I at one time thought that had some value, but the more I looked into it, the more I became convinced that it was not worth a dollar.

Q. You think it has no market value?

A. No, not in the world; I wouldn't give four dollars for the whole line all over the territory.

Mr. RICHARDS. How much less than nothing is it worth?

A. Well, I will tell you I wouldn't give four dollars for the whole line over the Territory. I wouldn't take it as a gift.

Mr. RICHARDS. We want to offer, if your honor please, the statement of facts, filed October 8th, 1888. I suppose it is in the case already.

Mr. VARIAN. No objection.

Mr. RICHARDS. We want it agreed that this statement of facts, filed October 8th, 1888, was the only evidence before the supreme court of the Territory of Utah, upon which they based their finding a decree in this case.

Mr. RAWLINS. We object to that as being incompetent, and the only purpose for which it can be offered is to impeach the decree, and in a court

of general jurisdiction, the decree is final and conclusive. We
389 object for that reason to its incompetency.

Mr. RICHARDS. As I understand, the fact itself is not denied.

Mr. RAWLINS. It appears the decree itself, purports to have been based upon other evidence.

Mr. DICKSON. Evidence on file?

Mr. RAWLINS. Well, there were depositions taken out of evidence; we make this objection.

Mr. DICKSON. We don't deny the fact that this was all the evidence before the court.

Mr. RAWLINS. We don't deny it; we don't know.

Mr. RICHARDS. Well, Mr. Rawlins does know. If you require us to prove it, of course we will make proof of it.

Mr. RAWLINS. We admit nothing that tends to impeach that decree.

Mr. DICKSON. We don't want to impeach it.

The MASTER. I understand you declined to enter into the agreement suggested by Mr. Richards?

Mr. VARIAN. Yes, sir; we stand right on our objection.

LE GRANDE YOUNG, being sworn as a witness in behalf of the defendants, testified as follows:

Direct examination by Mr. RICHARDS:

Q. Mr. Young, state whether or not you were one of the attorneys for the defendants in this case, when it was tried before the supreme court of the Territory of Utah?

A. Yes, sir; I was.

390 Q. (Showing witness paper called the agreed statement of facts). Do you recognize this paper?

A. Yes, sir; I do.

Q. What is that?

A. This is the statement of facts that was agreed upon, and filed by the respective attorneys for the plaintiffs and defendants.

Q. What was the date on which it was filed?

A. It was filed in the supreme court of the Territory of Utah, on the 8th day of October, 1888.

Q. State whether or not any evidence, either orrally or in the form of depositions, was introduced by either party in the trial of that cause?

Mr. RAWLINS. We interpose the same objection, that the evidence is incompetent, and the only effect of it would be to impeach the decree.

Mr. DICKSON. We ask that it take the same course that all other objections have, and let it be received subject to the objection.

The MASTER. Well, as I am now advised, I think the objection is good. I will permit the witness to answer, as it will be but a slight item of evidence, as I understand it, and will not encumber the record. The evidence may be taken, if the gentlemen can convince either the master or the court before the report goes, that it is of no materiality or incompetency in the case. The evidence will then be available and be in the record.

Q. There was no other evidence nor introduction of evidence, in any shape or form, either by depositions or orrally, except this statement of facts here agreed upon by the attorneys?

391 A. No evidence by either party.

Q. No evidence by either party?

A. No, sir.

Cross-examination of Le Grande Young by Mr. RAWLINS:

Q. Were you present at the time that decree was made; you were in the court when it was entered—the decree?

A. When it was signed? I think I was.

Q. Were you—do you recollect it?

A. Yes, sir; I was present, I recollect; and I recollect of being personally engaged in drawing up that stipulation of facts.

Q. Who drew that decree?

A. Mr. Richards, Mr. Hodeston, and Mr. Peters drew the first draft, and then it was submitted to our sight; and we examined it and reëxamined it, and discussed it with them.

Q. Was it submitted to you?

A. Yes, sir.

Q. Among the rest, was there other evidence on file in the case?

A. Besides that stipulation of facts?

Q. Yes, sir.

A. No, sir.

Q. Hadn't there been a hearing before Judge Sprague upon a motion to turn over the property?

A. Not in this case at all, sir; that was another matter.

Q. What matter was it?

A. It was a matter in reference to an application; there was a demand made by the receiver on Messrs. Preston, Burton, and Winders; they had certain property and they declined to yield it, and evidence was taken to find out whether it belonged to the church.

Q. Wasn't that in this case?

A. Not at all.

392 Q. Was there any other case?

A. It was simply a special proceeding before a master in regard to ascertaining who was the owner of certain property.

Q. Wasn't it in this case upon the order of the supreme court appointing Judge Sprague to hear it?

A. It wasn't in this case on which the decree was based at all.

(Question read.)

A. The evidence was not in this case.

Q. Didn't the receiver make application to the supreme court, and didn't the supreme court appoint Judge Sprague as a master, and wasn't evidence taken orally at great length through witnesses?

A. Not for the basis of this decree.

Q. And wasn't the evidence reduced to writing; and wasn't it returned and filed in the court; and isn't it there now?

A. Not as basis of this decree.

Mr. VARIAN. I think I am entitled to an answer, whether it was there or not.

The MASTER. I think the question ought to be answered by the witness directly if it is within his knowledge.

The WITNESS. Well, I am perfectly willing to answer the question that way, so far as that is concerned. That evidence may be filed there with a

lot of other evidence that was taken in different cases. But I maintain the question has sprung up, whether the evidence was taken in this case.

Mr. VARIAN. I object to the witness arguing as to its effect. I want the question answered whether it was not taken as I have indicated and filed with the court, and is on the files now.

393 A. Oh, I think possibly that is the case. Yes, sir; I know it was on file there. It was used afterwards in an examination before Judge Harkness; that same evidence was.

Redirect examination of Le Grande Young by Mr. DICKSON:

Q. In that investigation was there any inquiry or evidence taken as to anything beyond the question of ownership of the property at all?

Mr. VARIAN. We object to that; the evidence is in writing, and shows for itself, and is the best evidence.

The COURT. Let him answer this question.

A. No, sir; the testimony therein taken had no relevancy to this general issue. It was just simply in regard to the ownership of certain property which the receiver was *claiming*.

Mr. RAWLINS. We object to that, and move to strike it out as being a conclusion as to what evidence did tend to show.

The MASTER. I suppose the objection made to the answer is that it is a conclusion, or an opinion of the witness.

Mr. DICKSON. We will offer the files at noon; we can do it now I suppose.

Mr. VARIAN. The last answer was objected to; I ask that it be stricken out.

The MASTER. The objection is sustained.

Mr. DICKSON. We will offer the files.

Mr. VARIAN. Does that include all of the files?

Mr. DICKSON. Yes, sir.

394 Mr. MARSHALL. The order of the court referring the matter to the master to take testimony.

Mr. DICKSON. We will bring them all up if necessary.

(The petition of Receiver Dyer for an order to compromise, heretofore referred to, was marked Exhibit E.

The report of receiver Dyer was marked Exhibit F.

The agreed statement of facts was marked Exhibit G.)

The MASTER. Is there any other evidence?

Mr. DICKSON. Except that we will offer those files at noon.

Mr. VARIAN. Let it be entered into if you desire it. The files in this case are there subject to objection as stated by Mr. Rawlins.

Mr. RICHARDS. Yes, sir; then we are through.

The MASTER. Is there anything further on your part now, gentlemen?

Mr. VARIAN. Not if this includes all the files. I understand you offer all the files now on record in this matter in the supreme court.

Mr. DICKSON. Everything in the case.

Mr. VARIAN. This is only up to the decree I suppose?

Mr. DICKSON. That is all.

Testimony closes.

(Pp. 395 to 537, incl., omitted in printing per the following stipulation:)

537½ In the Supreme Court of the United States.

October Term, 1893.

THE UNITED STATES, APPELLANT,
vs.
THE LATE CORPORATION OF THE CHURCH OF Jesus Christ of Latter-Day Saints *et al.* } No. 887.

Stipulation as to printing of the record.

It is now hereby stipulated and agreed by and between counsel representing the parties to the above-entitled cause that in the printing of the record therein the clerk of the court is authorized and requested to omit the portions marked, respectively, "Exhibit A," "Exhibit B," "Exhibit C," and "Exhibit D," the right, however, being reserved to each party to refer to the parts so omitted in the argument of the cause.

LAWRENCE MAXWELL, JR.,
Solicitor-General, for Appellant.

F. S. RICHARDS,
By J. M. WILSON,
For Appellee.

Dated, Washington, August 8, 1893.

(Indorsed:) Case No. 15257. Supreme Court U. S. October term, 1893. Term No., 887. The United States, appellant, vs. the Late Corporation of the Church of Jesus Christ of Latter-Day Saints et al. Stipulation to omit parts of record in printing. Filed Aug. 9, 1893.

538 In the supreme court of Utah Territory.

UNITED STATES OF AMERICA PLAINTIFF,
vs.
THE LATE CORPORATION OF THE CHURCH OF Jesus Christ of Latter-Day Saints, John Taylor, late trustee in trust, Wilford Woodruff, Lorenzo Snow, Erastus Snow, Franklin D. Richards, Brigham Young, Moses Thatcher, Francis M. Lyman, John Henry Smith, George Teasdale, Heber J. Grant, and John W. Taylor, late assistant trustees in trust of said corporation, William B. Preston, Robert T. Burton, John R. Winder, Francis Armstrong, Jesse W. Fox, Jr., and Theodore McKean, defendants.

To the honorable, the supreme court of Utah, and to the honorable C. F. Loofbourow, master in chancery, appointed by said court in the above-entitled action to devise and report to said court a scheme for the disposition or application of the moneys and other personal property mentioned and referred to in the decree entered by said court in said action on the 8th day of October, 1888:

The above-named defendants, Wilford Woodruff, Lorenzo Snow, Franklin D. Richards, Brigham Young, Moses Thatcher, Francis M. Lyman,

John Henry Smith, George Teasdale, Heber J. Grant, John W.
539 Taylor, William B. Preston, Robert T. Burton, John R. Winder, Francis Armstrong, Jesse W. Fox, jr., and Theodore McKean, on behalf of themselves, and all other members of the religious association hereinafter mentioned and referred to, come now and respectfully represent and show to the said court and to the said master in chancery:

That each and all of them are now and for many years have been members of the church or body of religious worshippers commonly known as the Church of Jesus Christ of Latter-Day Saints.

That said church was incorporated at the time and in the manner set forth in the answer of the late corporation, defendant, and was annulled and dissolved as in said decree set forth.

That ever since such dissolution of said corporation hitherto, all the members of said church or body of religious worshippers have existed as a voluntary religious association.

That the above named defendant, Wilford Woodruff, is and ever since the seventh day of April, 1889, has been the duly chosen president or head of said religious association; and during all said period has been and now is recognized as such by all members of said church or association.

That the defendants above named, Lorenzo Snow, Franklin D. Richards, Brigham Young, Moses Thatcher, Francis M. Lyman, John Henry Smith, George Teasdale, Heber J. Grant, and John W. Taylor, are and for a long time past have been members of the body of ecclesiastical officials in said church known as the twelve apostles.

540 That ever since the incorporation of such church as stated in the pleadings in the above-entitled action, and for a long time prior thereto, the members of said church were accustomed to make and from time to time did make, voluntary contributions and donations to said church, which donations consisted of money and personal property. And that it was the intention of the said members of said church so donating said money and personal property, that the same should be devoted sole and exclusively by said church to religious and charitable uses and purposes; and the said donations and each and all of them so made prior to March 3rd, 1887, have been at all times used by the said church for religious and charitable purposes only.

That all the moneys and other personal property so contributed or donated to said church by the members thereof, ever since the incorporation of said church as aforesaid, have been managed, controlled and disbursed under the direction of the first presidency of said church, which consists of the president or head of the church and two counselors chosen from time to time by the members of said church.

That for several years prior to 1887 the president and trustee in trust of said church annually made a report to said church and to the members thereof, which report showed what disposition had been made by the church of all of said moneys and all of said personal property so contributed or donated to said church, from time to time, by the members
541 thereof and that during all the times hitherto, the members of said church have had full knowledge given to them by the said officers of said church of the uses and purposes to which the money and other personal property so contributed by the members thereof had been applied.

And the members of said church, and the various subordinate and other officers thereof, have at all times hitherto acquiesced in and approved of such disposition of the moneys and properties of the church.

That at all times since the incorporation of said church as aforesaid, and long prior thereto, the moneys and other properties so contributed and donated to said church by the members thereof as aforesaid, prior to March 3rd, 1887, have been by said church, under the direction of the first presidency thereof (until the same was taken possession of by the receiver in this action), devoted and applied solely to religious and charitable purposes, in which religious and charitable uses said church and the members thereof were interested.

Much the larger part of said moneys and personal property have hitherto, from time to time, prior to March 3rd, 1887, been devoted to the building of temples, in which the members of the said church worshipped God, and to other meeting-houses and places of worship for the members of said church; and also to the relief of the poor and the distressed members of said church, their families, and to the widows and orphans of the members of said church who were in needy or distressed circumstances.

542 That all the moneys and other personal property mentioned and referred to in said decree, is money and personal property, or the proceeds of money and other personal property, contributed from time to time, prior to March 3rd, 1887 (and generally in small sums), to said church by the members thereof, and by no other persons, and which money and property was to be devoted solely to the charitable and religious purposes in which said church and the members thereof were interested; and said donations were made with the intent on the part of the donors that it should belong to, and be used by, the said religious association for the charitable and beneficent purposes of the members thereof.

And no part of said money or personal property hitherto contributed by the members of said church, as above referred to, nor any part of said money or personal property involved in this examination will ever be used (if left under the control of said church or the officers thereof) for the purpose of teaching, promulgating, aiding, or abetting polygamy, plural or patriarchal marriages or bigamy; or for the purpose of promoting, encouraging, or teaching any tenet, religious belief or other precept in violation of the Constitution of the United States, or any of the laws thereof.

That heretofore, to wit, on the 25th day of September, 1890, the above-named defendant, Wilford Woodruff, being then the recognized president or head of the church or body of religious worsshippers, did, as

543 such, address to said church and the members thereof, a communication respecting the doctrine and practice of bigamy, polygamy, or plural marriages, a copy of which communication is hereto annexed, and marked "Exhibit A," and hereby referred to and made a part hereof.

That on the 6th day of October, 1890, the said defendant, Wilford Woodruff, as the president of said church, at the 61st regular semiannual conference of said church, submitted said communication to all members of said church in attendance at said conference; that the chief ex.lesia'-tical officials of said church, or body of religious worshippers, residing in

each and every county of the Territory of Utah and elsewhere, were in attendance at said conference, at the time said communication was so submitted as aforesaid.

That there were in attendance at said conference, at the time said communication was so submitted as aforesaid, more than ten thousand persons, all of whom were members of said church, and who were assembled in conference from all parts of said Territory and elsewhere.

That when said communication was submitted to said conference, as aforesaid, the same was endorsed and approved by all the officers and members of said church there present, and that from thence it has been, and is now (and it is the *re* intent of the officers and members of said church that it shall be), the recognized law of said church.

544 That it was the intention of the said president or head of said church by said communication so made to prevent in the future bigamous, polygamous, or plural marriages by members of said church, and that it was also the intention of said chief ecclesiastical officers of said church and of the members thereof, who were present at said 61st semiannual conference of said church, when they endorsed the recommendation and manifesto issued by the said president of said church, that bigamous, polygamous, or plural marriages should not exist within the pale of the Mormon church, to wit, the Church of Jesus Christ of Latter-Day Saints, or be practiced by its members or solemnized by its ministers.

That there has not been since the date last aforesaid, to the knowledge of these defendants or anyone of them, any bigamous, polygamous, or plural marriage contracted or entered into between any of the members of said church.

That at no time since the date last aforesaid has the president or head of such church, or any of the officers or members thereof, to the knowledge of these defendants, or any of them, or by or with the consent of any of them, in any manner advised, encouraged, or assented to the practice of bigamy, polygamy, or plural marriages by any members of said church.

That the officers and members of said church have been fully advised by the president or head thereof, and those in authority therein, that in the future any bigamous, polygamous, or plural marriages entered into by any of the members of said church would be disapproved by the

545 church, and those in authority therein, and the persons so violating the law of the church by entering into such a marriage would be subject to excommunication from said church.

That of the moneys and other property so contributed or donated to said church by the members thereof, as hereinbefore stated, the said church, under the direction of the first presidency thereof, has been accustomed to spend annually prior to March 3rd, 1887, and until the same was taken possession of by the receiver in this action, a very large amount, to wit, more than fifty thousand dollars, in relieving and assisting poor or distressed members of said church and their families.

Defendants further represent and show to the court and to the said master in chancery that said church or body of religious worshippers will be required in all the years to come to expend for the relief or assistance of sick, poor, or distressed members of said church, annually, a sum largely in excess of the income that can be derived from any investment that may be made of all the moneys and other personal property mentioned in said decree, which are of the total value of about $400,000.00.

And that of the moneys and other property so contributed or donated to said church by the members thereof, as hereinbefore stated, the said church, under the direction of the first presidency thereof, has been accustomed to spend annually, prior to March 3rd, 1887, and until the same was taken possession of by the receiver in this action, a very large sum in the building, repair, and maintenance of places of worship for the members
546 of said church, exclusive of the amounts expended in the building and maintenance of the temples of said church, to wit, more than fifteen thousand dollars.

And these defendants further represent and show to the court and to the said master in chancery that the said church or body of religious worshippers will be required, in the future, to expend in the building, maintenance and repair of convenient and necessary places of worship for the members of said church more than fifty thousand dollars annually, apart from what may be required for the building or maintenance of the temples of said church.

These defendants further allege that none of the purposes for which said personal property and moneys were donated or for which the same were intended to be used, or for which the same will be used in the future if left under the control of said church, are against public policy, contrary to good morals or opposed to the letter or spirit of the constitution or laws of the United States.

And these defendants, on behalf of themselves and all other members of said church, or body of religious worshippers, beg leave to suggest to this honorable court, and to the said master, that it would be manifestly inequitable and contrary to the dictates of plain and simple justice, to wrest the moneys and other personal property mentioned in the said decree from the hands of those who earned and contributed the same to said
547 church as aforesaid, and to divert it from the lawful and beneficial, charitable and religious uses and purposes for which it was originally contributed, and to which it has been heretofore applied, or to permit or require it to be applied to the benefit or advantage of those whom it was never designed, and for whose benefit or advantage it never would have been contributed or donated; especially when the way is plain and direct by which it can be applied to legal, legitimate, and praiseworthy uses, and which uses will be in consonance with the manifest design and purpose of those who cont'ibuted the fund, and whose labor, industry, and frugality created the same.

Wherefore said defendants, on behalf of themselves and their coreligionists, respectfully suggest that all the moneys and personal property mentioned in said decree be vested in the first presidency of said church, or body of religious worshippers, and their successors in office, in trust to invest the same and to apply the proceeds and income thereof to the relief and assistance of poor and distressed members of said church or body of religious worshippers, according to their best judgment and discretion, and to the building, maintenance, or repair of convenient and necessary places of worship for the members of said church.

That the proportion of the income of said fund or property which shall be so applied by said trustees to each of said purposes shall be fixed
548 and determined by the said master in chancery in his report herein; with directions to said trustses annually, to file an account of their management of said trust with the clerk of said court.

That the members of the first presidency of the said church, or body of religious worshippers, at the present time are: Wilford Woodruff, president, and George Q. Cannon and Joseph F. Smith, counsellors.

F. S. RICHARDS,
LE GRAND YOUNG,
DICKSON & STONE,
Attorneys for defendant.

549 EXHIBIT A.—*Official declaration.*

To whom it may concern:

Press dispatches having been sent for political purposes, from Salt Lake City, which have been widely published, to the effect that the Utah Commission, in their recent report to the Secretary of the Interior, allege that plural marriages are still being solemnized, and that forty or more such marriages have been contracted in Utah since last June or during the past year; also that in public discourses the leaders of the church have taught, encouraged, and urged the continuance of the practice of polygamy, I, therefore, as president of the Church of Jesus Christ of Latter-Day Saints, do hereby, in the most solemn manner, declare that these charges are false. We are not teaching polygamy, or plural marriage, nor permitting any person to enter into its practice, and I deny that either forty or any other number of plural marriages have during that period been solemnized in our temples or in any other place in the Territory.

One case has been reported, in which the parties alleged that the marriage was performed in the Endowment House, in Salt Lake City, in the spring of 1889, but I have not been able to learn who performed the ceremony; whatever was done in this matter was without my knowledge. In consequence of this alleged occurrence the Endowment House was by my instructions taken down without delay.

550 Inasmuch as laws have been enacted by Congress forbidding plural marriages, which laws have been pronounced constitutional by the court of last resort, I hereby declare my intention to submit to those laws, and to use my influence with the members of the church over which I preside to have them do likewise.

There is nothing in my teachings to the church or in those of my associates, during the time specified, which can be reasonably construed to inculcate or encourage polygamy, and when any elder of the church has used language which appeared to convey any such teaching, he has been promptly reproved. And I now publicly declare that my advice to the Latter-Day Saints is to refrain from contracting any marriage forbidden by the law of the land.

WILFORD WOODRUFF,
President of the Church of Jesus Christ of Latter-Day Saints.

(Endorsed:) Title, court, and cause. Scheme of defendants. Presente' to and filed by me October 19, 1891. C. F. Loofbourow, master in chancery.

551 In the supreme court of Utah Territory.

THE UNITED STATES OF AMERICA, PLAINTIFF,
vs.
THE LATE CORPORATION OF THE CHURCH OF Jesus Christ of Latter-Day Saints *et al.*, defendants.

To the honorable the supreme court of Utah and to the honorable C. F. Loofbourow, master in chancery, appointed by said court herein, to report a scheme for the application of the fund mentioned in the final decree entered in said court in this suit on the 8th day of October, A. D. 1888:

The plaintiff above named, The United States of America, respectfully represents:

That said fund may properly be applied to the use and for the benefit of the common schools of the Territory of Utah, and that, by said application, the Mormon people, members of the Church of Jesus Christ of Latter-Day Saints, will be more generally benefited than by any other application of the fund.

That the best interests of the schools and the school children of the Territory require that such fund remain intact, and that only the income thereof be applied as herein suggested:

552 Wherefore the United States prays that a scheme be devised and reported to the court providing for the application as herein set forth, and for the permanent investment of the fund with some trust company or upon other sufficient security.

CHAS. S. VARIAN,
District Attorney.
W. H. H. MILLER,
Attorney-General.

(Endorsed:) Title, court, and cause. Scheme proposed by U. S. Presented to and filed by me Nov. 14th, 1891. C. F. Loofbourow, master in chancery.

553 In the supreme court of Utah Territory.

THE UNITED STATES OF AMERICA, PLAINTIFF,
vs.
THE LATE CORPORATION OF THE CHURCH OF Jesus Christ of Latter-Day Saints *et al.*, defendants.

Exceptions to the report of C. F. Loofbourow, master in said case, filed upon the part of defendants, Wilford Woodruff, Lorenzo Snow, Franklin D. Richards, Brigham Young, Moses Thatcher, Francis M. Lyman, John Henry Smith, George Teasdale, Heber J. Grant, John W. Taylor, William B. Preston, Robert T. Burton, John R. Winder, Francis Armstrong, Jesse W. Fox, and Theodore McKean, and on behalf of all other members of that voluntary religious association known as the Church of Jesus Christ of Latter-Day Saints.

Now come the defendants in the above-entitled action or proceeding, Wilford Woodruff et al., on behalf of themselves and all other members

of that voluntary religious association known as the Church of Jesus Christ of Latter-Day Saints, and except to the report of the master filed in this court and cause on the 15th day of January, 1892.

Said defendants except, First. To that portion of paragraph 2 of
554 said report found on page 2 thereof, in which it is stated that the scheme suggested by said defendants for the application of the fund in question involves the vesting of all of said funds in the first presidency of said church in trust, to invest the same and apply the proceeds thereof to the relief of the poor of said church, according to the discretion of said first presidency, and to the building, maintenance, and repair of the places of worship of the members of said church, and for ground of exception thereto defendants say: That the scheme proposed by said defendants on behalf of themselves and all other members of said church contemplated that the first 'residency of said church being appointed trustee of said funds by this court should be required to report to this court annually, and as much oftener as they might be called upon by the court so to do, a full account of their management of said trust, so that the management and control thereof might at all times be under the direct supervision of this court.

Second. Said defendants except to that portion of the 2nd paragraph of said report, found on page 2 thereof, in which it is stated: "That ever since the organization of said church and down to the time when said fund was taken possession of by the receiver herein said fund has been managed, controlled, and disbursed by and under the directions of the first presidency of said church, and was devoted and applied solely to religious and
555 charitable uses in which said church and its members were interested;" and for ground of exception thereto defendants say that said report should have shown, as the fact is, that the said scheme so proposed by said defendants showed that it had been the uniform practice of said first presidency to submit to the members of said church semiannually a full, accurate, and detailed account of the management of said fund by said first presidency, and the uses to which said fund had been applied by said first presidency; that more than $50,000 of the money arising from contributions to said church by its members, and of which the fund here in question is a part, had been for many years annually applied by said first presidency to the relief of the poor and distressed members of said church and their families, and more than $50,000 arising from such contributions had been by said first presidency for many years applied annually to building and repairing the places of worship of the members of said church; that said semiannual reports so made by said first presidency as aforesaid were submitted by said first presidency to the members of said church for their approval, and that the reports of said first presidency showing the manner in which said contributeions and the proceeds thereof had been applied were ratified and approved by the members of said church.

Third. Said defendants except to that portion of said report found on page 3 thereof, in which it is stated that "it is apparent from the
556 foregoing statement that the scheme proposed by the defendants involves the placing of the fund in the identical same hands and to

some of the identical same uses to which it was being applied at and before the dissolution of the corporation and at and before the time when the decree in this cause was entered;" and for ground of exception thereto defendants say that the scheme proposed by said defendants contemplated the placing of said fund in the hands of the first presidency of said church, not as individuals or church officers merely, but as trustees of this court, which is very different from placing it in the identical hands which held it and managed it prior to the dissolution of the corporation.

Fourth. Said defendants except to that portion of said report found on pages 8 & 9 thereof, in which it is stated: That the uses to which this fund was, in fact, put by the first presidency, from the organization of the church corporation to the time the receiver took possession of it, were numerous and varying. They builded temples and meetinghouses; they built and operated a theatre; they constructed water dams and canals; they invested in the stock of Zion's Coöperative Mercantile Institution and in gas stock; they constructed and operated telegraph lines; they had bands of horses and herds of sheep; they contributed to the support of the poor of the church; they donated to the Indians; they colonized settlements of Indians who desired to sever their tribal relations; furnished them teachers, tools, machinery, sawmills, etc.; they contributed to the church, schools, and, in fact, made such disposition of the fund as
557 in the judgment of the first presidency was necessary or expedient for the interest of the church and its people. I think it may fairly be said that the intention of the contributors to this fund was to pay their tithings to the church and to leave all matters relating to the use that should be made of the fund so created to the discretion of the leaders of the church. * * * But it can not be said that any specific charity was within the purview of the donations.

The uses to which this fund was being applied are adjudged to be unlawful, and the court in making a cy pres application of the fund is not, in my judgment, confined to any particular charity or class of charities, but the whole range of legitimate charities is open before it. Any purpose which comes within the definition of the word charity in its broadest sense may be selected, and for ground of exception thereto said defendants say:

(a) That said report should have shown, as the evidence disclosed, that the investments referred to in said report as having been made by said first presidency in the stock of Zion's Coöperative Mercantile Institution, in the theatre, in gas stock, in horses and sheep, were surplus funds arising from contributions to the church by its members, for which there was no immediate need to meet any religious or charitable work of the church, and said surplus was from time to time so invested by said first presidency in order that the same might be made productive rather than to suffer it to lie idle.

(b) That said report should have shown that the water dams and
558 canals referred to therein were not constructed as church property, but that in several instances where members of the church were found in a small, sparsely settled agricultural district, and were unable to till their lands without the use of water, and were too poor to build and

construct the necessary water dams and canals without assistance, the first presidency had lent to them aid from these contributions in order that they might be enabled to enter upon the work of cultivating their lands and be put in the way of earning their own livelihood.

(c) That said report should have shown, as the testimony discloses, that the aid extended by the first presidency to Indians from these contributions was trifling in amount as compared with the amount arising from such contributions annually, and even this trifling amount was expended in teaching or endeavoring to teach said Indians some of the ruder or most common mechanical and agricultural arts in order that they might be made self-sustaining and be reclaimed from their tribal relations.

(d) There is no evidence to sustain the statement in the report that the first presidency, prior to the time the receiver took charge of the fund, had ever applied any portion of these contributions to their church schools.

(e) The evidence does not justify the statement in said report to the effect that the discretion of the first presidency over the contributions and the manner in which the same should be used and applied or the uses to which the same should be devoted was an uncontrolled discretion. On the contrary, the undisputed evidence shows that the first presi-
559 dency always submitted what they did in the way of management and use of these contributions and the proceeds thereof to the members of the church for their ratification and approval.

(f) It is not true that there was no specific charity within the purview of the donations referred to in the report. On the contrary, the undisputed evidence shows that said contributions and the proceeds thereof were almost exclusively devoted to the building of temples, meetinghouses, and other places of worship for members of the church, and to the relief of the poor of the church; that no portion of said donations were ever intended for or applied to any religious purposes or charitable work in which any person other than members of the church were interested; in other words, that said donations were intended to be applied by the donors and were, in fact, confined in their application to the religious and charitable uses and purposes of said church and its members alone.

(g) The master erred in his conclusion that the whole range of legitimate charities was open to him to select from in determining what application should be made of this fund. While there remains a lawful purpose or use to which the fund had been originally destined by those who created it and which is in no way opposed to public policy, and the needs of which are greater than can be met by the whole income that can be derived from the fund in question, the courts have no power to divert the fund f'om such lawful and praiseworthy charitable use to which it was originally devoted and apply it to an entirely different use or
560 charity embracing persons and classes of persons for whose benefit the donors of the fund or those creating the same never intended it should be used.

(h) The master erred in his conclusion that it had been adjudged that all of the uses to which this fund was being applied were unlawful. Surely this court never intended to adjudge that the relief of the poor of the

Mormon Church was unlawful or opposed to public policy. Neither could it have ever intended to adjudge that the building of meeting-houses and places of worship for members of that faith was unlawful. The court did not undertake to determine by its decree, nor had it the power to determine at the time *of* the decree was rendered what disposition should be made of this personal property.

Fifth. Said defendants except to the first finding of fact contained in said report, found on page 12 thereof, and for ground of exception thereto say: That the statement in said finding that the contributions therein mentioned were exacted by the church from its members, is not justified by the evidence, but that the undisputed evidence shows that all such contributions, whether made in the form of tithings or otherwise, were voluntarily made.

Sixth. Said defendants except to the second finding of fact contained in said report, found on page 12 thereof, and for ground of exception thereto say: That the statement therein to the effect "that no specific
561 charity was within the intention of said contributors, it being the intention of said contributors that the disposition of said fund, as to how it should be expended, should be left entirely to the discretion of the first presidency of the church," is not justified by the evidence. On the contrary, the evidence, without contradiction, shows that the relief of the poor of the church was one of the specific charities which the contributors had in view when making their contributions; that the building and repair of meetinghouses and other places of worship for the members of said church was another specific charity which they had in view, and the evidence also shows that the discretion of the first presidency in the application of the fund was not an uncontrolled discretion, but that they invariably sought the ratification of what they had done in the management of the fund, of the members of the church.

Seventh. Said defendants except to the third finding of fact contained in said report and found on page 12 thereof, and for ground of exception thereto say: That the statement therein to the effect that said fund, or any portion thereof, was used by the first presidency for educational purposes, is not sustained by the evidence, all the evidence showing that was not, nor was any part of it so used.

Eighth. Said defendants except to the fourth finding of fact con-
562 tained in said report and found on page 12 thereof, and for ground of exception thereto say: That the master should have added thereto the statement that the practice of polygamy not only has been abandoned by the church, but that the preaching, or teaching, or practice of the same has been forbidden.

Ninth. Said defendants except to the scheme recommended by said master to this court for the application of the funds in question, and for ground of exception thereto say: That no court in this country has the authority under the law to make the application recommended by the master.

Tenth. Said defendants, further excepting to said report, say: That the master should have reported a scheme for the application of the fund which would have confined it to one or more of the lawful uses or chari-

ties to which it was originally destined, as, for instance, the relief of the poor of said church and the building and maintenance of the necessary places of worship for the members of that faith.

F. S. RICHARDS,
LE GRAND YOUNG,
W. H. DICKSON,
Att'ys for Defendants.

We unite in the foregoing exceptions to the master's report.

J. W. JUDD,
KING & HOUTZ,
Att'ys for A. O. Smoot et al.

(Endorsed:) Title court and cause. Exceptions to master's report of defts. Woodruff et al. Filed in the supreme court Feb. 13, 1892, at Salt Lake City, Utah. Jos. P. Bache, clerk.

563 In the supreme court of Utah Territory.

Regular June term, 1892.

THE UNITED STATES OF AMERICA, PLAINTIFF,
vs.
THE LATE CORPORATION OF THE CHURCH OF Jesus Christ of Latter-Day Saints *et al.*, defendants.

FRIDAY, *September 2nd.*

This cause came on regularly for hearing upon the report of the master in chancery heretofore appointed by the court to report a scheme for the ascertainment and determination of such charitable uses, lawful in their character, as may most nearly correspond to those to which it was originally destined, for the 'ersonal property referred to and described in the decree of this court in this cause and now in the hands of the receiver herein, pursuant to the mandate of the Supreme Court of the United States heretofore read and filed, to wit, on the 29th day of June, 1891.

Whereupon counsel for the United States, plaintiff herein, moved the court that the scheme presented by the trustees of the Brigham Young Academy at Provo be stricken from the files and that the same should not be considered at this hearing; was argued by C. S. Varian, U. S. district attorney, for the motion, and by J. W. Judd, esq., in reply. Whereupon,

564 it was ordered that the said scheme of Abraham O. Smoot and others heretofore filed with the master, and also the schemes of Willard Young in behalf of the Young University, and of Fred. J. Kiesel and others in behalf of Weber, Cache, Box Elder, Morgan, and Rich counties be, and the same are hereby, stricken from the files, and it is further ordered that the request to file said schemes now be denied, to which order counsel for the respective parties duly excepted.

Thereupon the hearing proceeded and was argued by Franklin S. Richards, W. H. Dickson, J. W. Judd, and J. G. Sutherland, for defendants; by C. S. Varian, for the plaintiff, pending which court adjourned till 10 o'clock to-morrow morning.

565 In the supreme court of Utah Territory.

Regular June term, 1892.

THE UNITED STATES OF AMERICA, PLAINTIFF,
vs.
THE LATE CORPORATION OF THE CHURCH OF Jesus Christ of Latter-Day Saints *et al.*, defendants.

SATURDAY, *September 3rd.*

The hearing of this case upon the report of the master in chancery was further proceeded with, Charles S. Varian, esq., and J. L. Rawlins, esq., arguing for the plaintiff herein. Defendants were granted permission to file printed brief in reply to argument of plaintiff.

566 In the supreme court of Utah Territory.

THE UNITED STATES OF AMERICA, PLAINTIFF,
vs.
THE LATE CORPORATION OF THE CHURCH OF Jesus Christ of Latter-Day Saints *et al.*, defendants. } Decree.

SATURDAY, *Nov. 12th*, 1892.

This cause having come on to be heard before this court at a former day of this term upon exceptions to the master's report filed herein, on the 19th day of October, 1891, and the same having been argued by counsel for the respective parties and submitted to the court, and the court being now fully advised in the premises,

It is hereby ordered, adjudged, and decreed that the scheme for the disposition of the fund in controversy reported and suggested to this court for adoption by the master in his said report be, and the same is hereby, disapproved and rejected.

And it is further ordered, adjudged, and decreed that said fund and the whole thereof be, and the same hereby, is vested in Leonard G. Hardy, in trust, to be by him invested to the best advantage, having in view the security of the fund as well as the income to be derived from the investment. And to collect and receive the proceeds of all such investments and to apply such proceeds, or such portion thereof, and so much of the principle from time to time as may be necessary for that purpose, to the support and aid of the poor members of the Church of Jesus Christ of Latter-Day Saints, and to the building and repairing of houses of worship for the members of said church.

567 And it is further ordered, adjudged, and decreed that the said Leonard G. Hardy be required to give a bond to the Government of the United States in the sum of five hundred thousand dollars, to be approved by this court or the chief justice thereof, and to be conditioned for the faithful performance of his duties as such trustee.

And it is further ordered, adjudged, and decreed that the said Leonard G. Hardy, as such trustee, be, and is hereby, required to make a report to this court on the first day of January of each year of his administration of said trust.

568 By direction of the court the clerk notes on the foot of this decree the exceptions of the United States to the decree entered by the court for approving in part the scheme proposed on behalf of the members of the Church of Jesus Christ of Latter-Day Saints and the unincorporated association thereof, for the reason that the same is contrary to the law and the proofs: And because the court should direct the master to review his report and return additional findings and conclusions in accordance with the opinion of the court upon such additional proofs as may be taken, it appearing that the master did not make a full and complete examination and report because of his erroneous construction of the decree appointing him and conferring his authority. And it is ordered for the purposes of an appeal that the proofs returned by the master, with his report, be deemed a part thereof, and as such a part of the record herein as fully as if incorporated in a bill of exceptions.

Thereupon counsel for the United States, plaintiff herein, prayed the allowance of an appeal from the judgment rendered by this court in this cause to the Supreme Court of the United States, and that proceedings in this matter be stayed pending such appeal; and it was ordered that such appeal as prayed for be allowed, and that further proceedings in this matter be stayed pending the determination of said appeal.

569 In the supreme court, Territory of Utah.

June term, 1892.

THE UNITED STATES OF AMERICA, PLAINTIFF,
vs.
THE LATE CORPORATION OF THE CHURCH OF Jesus Christ of Latter-Day Saints and others, defendants.

OPINION.

(Marked:) Filed Nov. 12, 1892. Jos. P. Bache, clerk.

570 In the supreme court of Utah Territory.

THE UNITED STATES OF AMERICA, PLAINTIFF,
vs.
THE LATE CORPORATION OF THE CHURCH OF Jesus Christ of Latter-Day Saints and others, defendants.

ZANE, C. J.:

We are now called upon to designate the objects to which the personal property in the hands of the receiver shall be devoted, and to decide upon the mode of its application.

The questions presented for our decision require an examination of the master's report and the interpretation of Congressional enactments designed to suppress polygamy, as well as an application of the doctrine of equity applicable to the rights of property dedicated to charitable uses.

This suit is maintained under sec. 17 of an act in force March 3d, 1887, and is as follows:

571 "That the acts of the legislative assembly of the Territory of Utah, incorporating, continuing, or providing for the corporation

known as the Church of Jesus Christ of Latter-Day Saints, and the ordinance of the so-called general assembly of the State of Deseret incorporating the Church of Jesus Christ of Latter-Day Saints, so far as the same may now have legal force and validity, are hereby disapproved and annulled, and the said corporation, in so far as it may have or pretend to have any legal existence, is hereby dissolved. That it shall be the duty of the Attorney-General of the United States to cause such proceeding to be taken in the supreme court of the Territory of Utah as shall be proper to execute the foregoing provisions of this section and to wind up the affairs of said corporation conformably to law; and in such proceedings the court shall have power, and it shall be its duty, to make such decree or decrees as shall be proper to effectuate the transfer of the title to real property now held and used by said corporation for places of worship and parsonages connected therewith, and burial grounds, and of the description mentioned in the proviso to section thirteen of this act and in section twenty-six of this act, to the respective trustees mentioned in section twenty-six of this act; and for the purposes of this section said court shall have all the powers of a court of equity."

Section 13 referred to in the section quoted, made it "the duty of the Attorney-General of the United States to institute and prosecute pro-
572 ceedings to forfeit and escheat to the United States the property of corporations obtained or held in violation of section 3 of the act of Congress, approved July 1st, 1862, entitled 'An act to punish and prevent the practice of polygamy in the Territories.' This section also declared that such property so forfeited and escheated should be disposed of by the Secretary of the Interior and the proceeds thereof applied to the benefit of the common schools in the Territory in which such property might be, and provided that no building, or the grounds appurtenant thereto, held and occupied exclusively in which to worship God, or parsonages connected therewith, or burial grounds, should be forfeited. And section 3, above mentioned, declared that it should not be lawful for any corporation or association, for religious or charitable purposes, to acquire or hold real estate in any Territory of a greater value than $50,000, and that all real estate acquired or held by any such corporation or association contrary to the provisions of the act should be forfeited and escheated to the United States.

Section 26, also referred to in sec. 17, is as follows:

"That all religious societies, sects, and congregations shall have the right to have and to hold, through trustees, appointed by any court exercising probate powers in a Territory, only on the nomination of the authorities of such society, sect, or congregation, so much real property for the erection or use of houses of worship, and for such parsonages and
573 burial grounds as shall be necessary for the convenience and use of the several congregations of such religious society, sect, or congregation."

These acts provide that all real estate held by any church for religious or charitable purposes, not used for houses of worship, parsonage, or burial grounds, acquired contrary to the act of 1862, shall be forfeited and escheated to the United States.

And they annul the charter of the Church of Jesus Christ of Latter-Day Saints and provide for winding up its affairs and for the transfer of

its real property, not forfeited and escheated, to trustees appointed by the probate court on the nomination of the authorities of such church.

In these enactments Congress recognized the religion of the Latter-Day Saints as lawful, and their church, though disincorporated, as having the right, through trustees selected by its authorities, to own houses in which to worship God and for their ministers to live in. In the 2d section of the act of 1862 it is declared that it shall be so construed as not to effect or interfere with "the right to worship God according to the dictates of conscience."

Upon a hearing of this case on the bill, answer, evidence, and stipulations of the parties, this court held the various sections above mentioned, and the acts referred to, valid, and appointed a receiver to take possession of all real and personal property of the defunct corporation and to hold the same to be disposed of according to law; and upon a further and subsequent hearing the court made a further decree by which it set
574 apart to the disincorporated body of religious worshipers, block eighty-seven in Plat "A," Salt Lake City, known as the "Temple Block," and held the remainder of its real estate acquired in violation of the 3d section of the act of 1862 subject to forfeiture and escheat to the United States. That the personal property of the church, by reason of the dissolution of its corporation, because of the failure or illegality of the trust to which it had been dedicated at its acquisition, and in consequence of its use by the corporation by operation of law became forfeited and escheated to the United States. From this decree the defendant and the intervenors, George Romney and others, on behalf of themselves and all other members of the late corporation, appealed to the Supreme Court of the United States. The latter court affirmed the decree appealed from, except the part relating to the personal property, and held that the personal property could not be appropriated to the purpose to which it had been dedicated because the same was, "in whole, or in part, contrary to law or opposed to public policy; that there did not exist any person or persons, natural or legal, legally entitled to any portion of it as successors in interest to the church, and that it had devolved on the United States, and not being lawfully applicable to the purposes to which it was originally dedicated or for which it had been acquired, and to which at the commencement of this suit it was being devoted by the corporation and its controlling authorities, the same ought to be limited and appointed
575 to such charitable uses, lawful in their character, as should most nearly correspond to those to which it was originally destined, to be ascertained and defined * * * by reference to a master for due examination, inquiry, and report thereon, subject to the approval of the court, and to be established, administered, and carried out in such manner and according to such scheme as may be approved by the court."

The case was remanded to this court with directions to modify its decree as above directed "and to take such further proceedings as to law and justice may appertain in conformity with the opinion."

In conformity with this opinion of the Supreme Court of the United States and its decree, this case was referred to the master. And two schemes were presented to him. One by defendant's solicitors, proposing to vest such personal property in the first presidency of the church, in trust for the relief and assistance of its poor members needing pecuniary

aid, and for the erection, repair, and maintenance of houses of worship of people of that faith and limiting the use to these two purposes

The other scheme proposed by the solicitors of the United States would vest this property in a commissioner appointed by the court to be used by him for the benefit of the public schools of the Territory.

The master has reported this last plan and recommends its approval by the court, to which the defendants' solicitors object and ask us to approve their scheme, and plaintiff's solicitors insist upon the approval of the one recommended by the master.

576 Behind the legal title to the funds in controversy in the late corporation, lie beneficial rights belonging to natural persons. Out of the confidence reposed in the church officials who controlled them, an obligation arose that they would faithfully apply these funds according to the general understanding of their contributors. The Supreme Court of the United States in its opinion directing these proceedings, said: "The property in question has been dedicated to public and charitable uses. It matters not whether it is the product of private contributions made during the course of half a century, or of taxes imposed upon the people, or of gains arising from fortunate operations in business or appreciation in values; the charitable uses for which it is held are stamped upon it by charter, by ordinance, by regulation and by usage in such an indelible manner that there can be no mistake as to their character, purpose, or object." (Mormon Church vs. United States, 136 U. S., p. 50.)

In its opinion the court does not distinguish and consider singly and separately the various charitable objects to which the property in controversy was dedicated. In fact the inquiry, by the trial court, had not gone that far; they were considered in a lump (so to speak) and the whole lump appears to have been regarded as tainted with polygamy. The court on appeal could not look at the merits of each object of charity sepa-

577 rately because the findings or the evidence did not disclose the objects singly or their peculiar merits.

In his inquiry the master advanced, and we are permitted to see, the objects to which the fund had been devoted. In the light of the evidence reported by him we can distinguish the good from the bad, the worthy from the unworthy, and understand to which, and in what proportions the church authorities had applied the fund before it was taken out of their hands.

It appears from the evidence reported by the master that George Q. Cannon testified: "That he was first counselor to Wilford Woodruff, president of the church, and that he was familiar with the purposes for which contributions creating the fund were made for many years; that they were voluntarily made for religious and charitable purposes; that appropriation and distribution of it was left to the first presidency, and the proceeds were expended on temples and places of worship and for the poor and such charitable objects as arose; that the first presidency in their appropriations of this fund were limited to church purposes; that the custom has been for the First Presidency to submit to the semi-annual conference of the church a report showing the appropriations and their purposes, and such reports were approved by that body. This testimony was corroborated by the testimony of other officers of the church, and there was no evidence contradicting it.

The master, in his report, states that the "allegations that ever
578 since the organization of the church and down to the time when the fund was taken possession of by the receiver herein, the fund has been managed, controlled, and disbursed by and under the direction of the first presidency of the church, and was devoted and applied solely to the religious and charitable uses in which the church and the members thereof were interested; that much the larger part of the fund had, prior to March 3d, 1887, been devoted to the building of temples, meeting-houses, and other places of worship for the members of the church and for the relief of its poor and distressed members, their families, and to the widows and orphans of such members who were in needy and distressed circumstances, were in the main supported by the evidence adduced before him."

It also appears from the testimony, that about $75,000 per annum had been appropriated out of this fund to assist the poor previous to the time it was placed in the hands of the receiver, and about $50,000 per annum to the erection and repair of places of worship, and that as much will be required in the future.

The money and personal property in the hands of the receiver and to be disposed of by the court is about $400,000. The money donated to assist and relieve the poor and erect places of worship and maintain and repair them is for charitable uses.

The St. of 43 Eliz., c. 4, is regarded as the highest standard by which to determine charitable uses and purposes.

579 Among the objects mentioned in that act as charitable is "Relief for the aged, impotent, and poor people;" donations for "schools of learning, free schools, repairs of churches;" and for "aid or ease of any poor inhabitants;" and for "house of correction;" many other purposes and objects are mentioned as charitable in this statute.

The statute has been liberally construed by the courts.

In the case of Jackson vs. Phillips and others, 14 Allen, 554, the court said: "Charities are not confined at the present day to those which were permitted by law in England in the reign of Elizabeth. A gift for the advancement of religion or other charitable purpose in a manner permitted by existing laws is not the less valid by reason of having such an object as would not have been legal at the time of the passage of the statute of charitable uses. For example, charitable trusts for dissentors from the established church have been uniformly upheld in England since the toleration act of 1 W. & M. c. 18, removed the legal disabilities under which such sects previously labored.

(Attorney-General vs. Hickman, 2 Eq. Cases; Ab. 193; Loyd vs. Spillet, 3 P. W. 344; S. C. 2 Atk. 148; Attorney-General vs. Cock, 2 Ves. Sen. 273.)

580 "And in this country since the Revolution no distinction has been made between charitable gifts for the benefit of different religious sects."

While the master finds in substance that the fund was devoted and applied by the church solely to the religious uses of the church, and much the larger part of it to places of worship for its members, and to the relief of its poor and distressed members and their families, and to widows and orphans of such members in needy and distressed circumstances, he

reached the conclusion "That all the uses to which this property had been applied rested under the condemnation of the decree of the Supreme Court of the United States; that it had been adjudicated that the property can not go back to any of such uses." If this conclusion as to the effect of that decree is correct, then the scheme proposed by which the fund would be devoted alone to assist poor, distressed, and needy members of the church, its widows and orphans, and to aid in the construction and repair of its houses of worship, must be denied.

The court, having found in its decree that the uses and purposes to which the fund in question had been dedicated, were in whole or in part, opposed to public policy, good morals, and contrary to the laws of the United States, said: "And not being lawfully applicable to the purposes for which it was originally dedicated or acquired, and to which at the commencement of this suit, it was being devoted by the corporation and its con-
581 trolling authorities, the same ought to be limited and appointed to such charitable uses, lawful in their character, as most nearly correspond to those to which it was originally destined."

The court did not mean to say that the assistance of the poor and distressed members of the church and aid and comfort to the widows and orphans of its members were opposed to public policy, good morals, and contrary to the laws of the United States.

The decree concludes: "Wherefore it is * * decreed that the cause be remanded to the supreme court of the Territory of Utah, with directions to modify its decree as herein directed, and to take such further proceedings as to law and justice may appertain in conformity with the opinion of this court." (Mormon Church vs. United States, 140 U. S., 665.)

This decree must be construed in the light of the opinion of the court ordering and making the decree. (136 U. S., 50.)

The court used the following language in its opinion:

"But it is also stated in the findings of fact, and is a matter of public notoriety, that the religious uses intended to be subserved and promoted are the inculcation and spread of the doctrines and usages of the Mor' Church, one of the distinguishing features of which is the practice of polygamy, a crime against the laws, and abhorent to the sentiments and feelings of the civilized world." And after stating that the church,
582 in defiance of law, was persevering in propogating this doctrine, and condemning it in unmistakable language, the court continued: "The question, therefore, is whether the promotion of such nefarious system and practice, so repugnant to our laws and to the principles of our civilization, is to be allowed to continue by sanction of the Government itself; and whether the funds accumulated for that purpose shall be restored to the same unlawful uses as heretofore, to the detriment of the true interests of civil society."

In substance, the court said that the fund was used to promote and spread the doctrines and usages of the church, one of the distinguishing features of which was the practice of polygamy, and that to return it to the authorities of the church or to Romney and others, intervenors, on behalf of all its unincorporated members as they asked to be appropriated and used without limitation, would be in effect to sanction such unlawful use of the fund for the same unlawful purpose—the propogation of polygamy.

It understood that this fund was used to propogate and spread the doctrines and usages of the church and that polygamy was one of those doctrines and its practice was one of its usages; the court did not undertake to distinguish the lawful purposes of the church from the one that was unlawful; it was not asked by the parties, or either of them, to do that.

Referring to the law of March 3d, 1887, the court said: "The only question we have to consider in this regard is as to the constitu-
583 tional power of Congress to pass it. Nor are we now called upon to declare what disposition ought to be made of the property of the Church of Jesus Christ of Latter-Day Saints.

"This suit is in some respects an auxiliary one, instituted for the purpose of taking possession of and holding for final disposition the property of the defunct corporation in the hands of a receiver and winding up its affairs. To that extent and to that only the decree of the supreme court of the Territory has gone."

The opinion concludes: "The application of Romney and others, representing the unincorporated members of the Church of Jesus Christ of Latter-Day Saints, is fully disposed of by the considerations already adduced. The principal question discussed has been, whether the property of the church was in such a condition as to authorize the Government and the court to take possession of it and hold it until it shall be seen what final disposition of it should be made; and we think it was in such a condition, and that it is properly held in the custody of the receiver.

"The rights of the church members will necessarily be taken into consideration in the final disposition of the case. There is no ground for granting their present application. The property is in the custody of the law, awaiting the judgment of the court as to its final disposition in view of the illegal uses to which it is subject in the hands of the Church of Latter-Day Saints, whether incorporated or unincorporated. The
584 conditions for claiming possession of it by members of the sect or community under the act do not at present exist."

The court held that it was not then called upon to declare what disposition ought to be made of the fund; that the principal question considered by it was whether the property of the church was in such a condition as to authorize the court to take possession of it by its receiver and hold it until it should be seen what final disposition should be made of it; that the property was in the custody of the law awaiting final disposition by the court in view of the illegal uses to which it was subject in the hands of the church authorities whether incorporated or unincorporated; that the conditions for claiming possession of it by the members of the Mormon sect or community did not then exist; that their rights would necessarily be taken into consideration in the final disposition of the case; and that there was no ground for granting their application, as then made, at that time.

In this there is nothing to indicate that the court understood that the rights of the unincorporated members of the church were barred by its decree. In fact, the court expressly said that their rights would necessarily be taken into consideration in the final disposition of the case—rights determined by the decree could not be taken into consideration afterwards. The case was remanded and the Territorial court was directed to refer the questions as to the rights of the church and its members, and all others to

the fund, to a master for examination and inquiry as to their rights
585 under the conditions existing at the time of the inquiry and for the suggestion of a scheme or mode by which it could be "limited and appointed to such charitable uses, lawful in their character, as might most nearly correspond to those to which it was originally destined."

We can not concur in the conclusion of the master that the supreme court in its decree condemned all the uses to which the fund had been dedicated, and that it forbids the application of any part of it to any of them. It appears from the opinion that polygamy was the only object that the court found to be unlawful, and we can not believe that it intended to condemn all the worthy purposes of the church because of this unlawful one. Did the virus of this permeate every charitable purpose of the Mormon people? One of the charities to which this fund was appropriated was the assistance and relief of the poor of the church, another was the erection and repair of houses of worship. The decree can not be construed to condemn those purposes—to condemn those qualities as vicious in the Latter-Day Saints that we regard as virtues in other people.

We are of the opinion that the decree of the Supreme Court of the United States in this cause does not forbid us from limiting and appointing this fund to any charitable use that is lawful within the scope of the purpose to which it was originally dedicated.

We will now consider the two schemes presented for our consideration and adoption. Neither of them is unlawful or opposed to public policy or immoral.

586 The scheme that would devote the fund to the aid and assistance of the poor members of the church and their families and to the erection and repair of its places of worship would limit it to objects within the scope of the intentions of its donors.

The other would devote and appoint it to a use not intended by its donors and to which it was not dedicated.

This brings us to the question can the court appropriate this fund to a charitable object not intended by its contributors and to which it had not been dedicated.

The court said in its opinion remanding this case, "It is obvious that any property of the corporation which may be adjudged to be forfeited and escheated will be subject to a more absolute control and disposition by the Government than that which is not so forfeited. The non-forfeited property will be subject to such disposition only as may be required by the law of charitable uses, while the forfeited and escheated property, being subject to a more absolute control of the Government, will admit of a greater latitude of discretion in regard to its disposition."

The legal title and all equitable rights to the real estate forfeited and escheated, because held contrary to the law of 1862, vests in the Government to be dealt with and disposed of according to law. While the personal property can not be so forfeited and escheated and it must be disposed of according to the law of charities. While the decree gave
587 the possession and custody of the personal property to the receiver to be held subject to the further order of the court the use was to charitable objects, lawful in their character, within the general intent of the donors. The opinion does not say that the control over the personal property is absolute; that it was regardless of the purposes of its dedica-

tion. The court further said in the same opinion: "The principles of the law of charities are not confined to a particular people or nation, but prevail in all civilized countries pervaded by the spirit of Christianity. * * *

A leading and prominent principle prevailing in them all is that property devoted to a charitable and worthy object promotive of the public good shall be applied to the purpose of its dedication, and protected from spoilation and from diversion to other objects. Though devoted to a particular use it is considered as given to the public, and is therefore taken under the guardianship of the law. If it cannot be applied to the particular use for which it was intended, either because the objects to be subserved have failed, or because they have become unlawful and repugnant to the public policy of the State it will be applied to some object of kindred character so as to fulfill in substance, if not in manner and form, the purpose of its consecration."

In illustration of the application of the principle, the court quotes from the opinion of Lord Chief Justice Wilmot, in his opinion in Attorney-General vs. Lady Downing, 1 Wilmot, 32: "But where property
588 is given to mistaken charitable uses this court distinguishes between the charity and the use; and seeing the charitable bequest in the intention of the testator they execute the intention, varying the use as the King who is the curator of all charities, and the constitutional trustee for the performance of them, pleases to direct and appoint."

In this it is not stated that a court of equity in the exercise of its ordinary jurisdiction could vary the use to objects outside of the intention of the donors; but it does say "varying the use as the King pleases to direct and appoint." And after citing cases from various countries, many from England and our own land in illustration of the doctrine of cy pres, the court continues, "The true ground is that the property given to a charity becomes in a measure public property, only applicable as far as may be it is true, to the specific purposes to which it is devoted. * * * * Hence when such property ceases to have any other owner by the failure of the trustees, by forfeiture for illegal application, or for any other cause, the ownership naturally and necessarily falls upon the sovereign power of the State; and thereupon the court of chancery, in the exercise of its ordinary jurisdiction will appoint a new trustee to take the place of the trustees that have failed or that have been set aside, and will give directions for the further management and administration of the property; or if the case is beyond the ordinary jurisdiction of the court the legislature may interpose and make such disposition of the matter as will accord with
589 the purposes of justice and right. The funds are not lost to the public as charity funds; they are not lost to the general objects or class of objects which they were intended to subserve or effect."

In this the court says that when such property ceases to have any other owner by the failure of the trustees for any cause, the court of chancery in the exercise of its ordinary jurisdiction will appoint new trustees; or if the case is beyond the ordinary jurisdiction of the court the legislature may interpose and make such disposition of the matter as will accord with the purposes of justice and right.

If a person holding the legal title of property, for the use of another, or others, refuses to discharge the obligation arising out of the confidence

reposed in him to apply it according to the trust, or if he forfeits his right to do so for any cause the court in the exercise of its ordinary jurisdiction will appoint another trustee. This jurisdiction termed ordinary is confined to the selection of the instrument to apply the property to the object. It does not extend to the selection of a new object to which to apply the funds.

The ordinary jurisdiction is here limited to the mode; but if the case is beyond that the opinion says the legislature may interpose to prevent the funds from being lost to the general objects or class of objects which they were intended to subserve, and in so doing may make such disposition of the matter as will accord with justice and right.

In the opinion from which we have been quoting the court de-
590 fined the powers of the Government to deal with the real estate forfeited and escheated to it, and also its authority with respect to the property not so forfeited and escheated. The court also discussed the power of the Government through its courts of equity in the exercise of their ordinary jurisdiction and its authority through the sovereign in monarchical governments and also its authority as expressed in enactments of the lawmaking department in a republic.

It requires a careful examination of the opinion to distinguish the powers held to be applicable to the forfeited and escheated property from those applying to the property not forfeited and escheated, and also to distinguish the powers held to pertain to the court in the exercise of its ordinary jurisdiction with respect to property dedicated to charitable uses from those belonging to the sovereign in a monarchy with respect to such property or to the lawmaking department in a government based upon the will of the people—one in which they are sovereign.

In Jackson vs. Phillips and others, 14 Allen, 539, a testator "bequeathed two sums to trustees; one for the preparation and circulation of books, newspapers, the delivery of speeches, and such other means as in their judgment" would "create a public sentiment" as would "put an end to negro slavery in this country," and the other for the benefit of "fugitive slaves" who might "escape from slave-holding States." After his death slavery was abolished by the thirteenth amendment to the Constitution of the United States: Held "that these charitable bequests should be
591 applied to carry out the intentions of the testator as nearly as possible, according to a scheme to be settled by a master and approved by the court." The master reported that "both sums should be paid over to the trustees, the first to be paid by them from time to time to an association already established to promote the education, support, and interest of the freedmen, lately slaves in those States in which slavery had been so abolished; and the second sum (being of small amount) to the use of necessitous persons of African descent in the city of Boston and its vicinity, preference being given to such as had escaped from slavery."

The purpose of the first bequest was the liberation of negro slaves, and the purpose of the second was to assist such as might escape from slave-holding States. The general purpose was aid to negro slaves. And these slaves having been liberated, the court held that the sum should be devoted to their use and benefit as freedmen, except a small portion to be used for the benefit of necessitous persons of the same race in Boston and its vicinity. While the mode prescribed by the testator for benefitting the negro slave by securing their liberation and by aiding those who had escaped

from slavery was necessarily abandoned the general object of the bequest was not. The court devoted it to their use as freedmen and to needy persons of the same race in a particular locality.

In this decision the court went to the verge of its jurisdiction. In the same opinion the court said, "This power of disposition by the
592 sign manual of the crown in direct opposition to the declared intention of the testator, whether it is to be deemed to have belonged to the King as head of the church as well as of the state, intrusted and empowered to see that nothing be done to the disherison of the crown or the propagation of a false religion; Rex vs. Portington, 1 Salk., 162; S. C. 1 Eq. Cas. Ab., 96; or to have been derived from the power exercised by the Roman emperor, who was sovereign legislator as well as supreme interpreter of the laws; Dig. 33, 2, 17; 50, 8, 4; Code, lib. 1, tit. 2, c. 19, tit. 14, c. 12; is clearly a prerogative and not a judicial power, and could not be exercised by this court; and it is difficult to see how it could be held to exist at all in a republic, in which charitable bequests have never been forfeited to the use or submitted to the disposition of the government, because superstitious or illegal. 4 Dane Ab., 239. Gass vs. White, 2 Dana, 176. Methodist Church vs. Remington, 1 Watts, 226."

In the same opinion the court said further: "It is accordingly well settled by decisions of the highest authority, that when a gift is made to trustees for a charitable purpose, the general nature of which is pointed out, and which is lawful and valid at the time of the death of the testator, and no intention is expressed to limit it to a particular institution or mode of application, and afterwards, either by change of circumstances the scheme of the testator becomes impracticable, or by change of law becomes illegal, the fund, having once vested in charity does not go to the
593 heirs at law as a resulting trust, but is to be applied by the court of chancery, in the exercise of its jurisdiction in equity, as near the testator's particular directions as possible, to carry out his general charitable intent."

The court expressly said, that when the gift is for a charitable purpose the general nature of which is pointed out, and no intention is expressed to limit it to a particular institution or mode of application, and afterwards the scheme of the testator becomes impracticable or illegal, the fund must be applied by the court as near the testator's particular direction as possible to carry out his general charitable intent. The court cannot select any object of charity outside the scope of the general intent.

The doctrince of cy pres is only a liberal rule of construction to ascertain the intention of the donor and all the rules relating thereto are intended to aid in ascertaining and carrying out as nearly as may be the true intention of the donor. His intention should be the aim of the court.

"The difference between the crown and the court is this: The court is governed by known judicial rules of interpretation; the crown is governed by its own good will and pleasure in deducing or imparting such intentions as it sees fit." (2 Perry on Trusts, sec. 727.)

In discussing the doctrince of cy pres in its opinion in the case of Moore's heirs vs. Moore's devisees (4 Dana, 354), after referring to the
594 prerogative of the King as parens patriae as to gifts to charitable uses, the court said: "And this regal prerogative with some

other curative powers inherent in the crown, was delegated to the chancelor of England in his ordinary ministerial capacity as the keeper of the great seal and official organ of the King." And then after remarking that we have no such officer in the United States as the chancellor of England; that our chancery courts have no other jurisdiction than that of courts of equity, and no other power than that which is judicial or regulated by law, said further that: "We do not admit that the commonwealth, as parens patriae, can rightfully interfere unless there be an escheat to her; and then she may become absolute and beneficial owner. Rights here are regulated by law." * * * "We are satisfied that the cy pres doctrine of England is not or should not be a judicial doctrine, except in one kind of case; and that is, where there is no available charity to an identified or ascertainable object, and a particular mode, inadequate, illegal, or inappropriate, or which happens to fail, has been prescribed.

"In such a case, a court of equity may substitute or sanction any other mode that may be lawful and suitable, as will effectuate the declared intention of the donor, and not arbitrarily and in the dark, presuming on his motives or wishes, declare an object for him. A court may act judicially as long as it effectuates the lawful intention of the donor, but
595 it does not act judicially when it applies his bounty to a specific object of charity, selected by itself, merely because he had dedicated it to charity generally, or to a specified purpose which can not be effectuated; for the court can not know or decide that he would have been willing that it should be applied to the object to which the judge, in the plentitude of his unregulated discretion and peculiar benevolence, has seen fit to decree its appropriation, whereby he, and not the donor, in effect and at last, creates the charity."

This doctrine was reaffirmed in Curling's admrs. vs. Curling's heirs (8 Dana, 38), the court holding that property dedicated by the donor to a certain charity could not be diverted or appointed by the court to any other object, and if property is devised in such general terms that it may be devoted to one or more of several charities it can not be devoted by the court to any object not embraced in such general terms, and said that by doing so the court might apply the charity to an object which the donor did not intend it and to which he never would have devoted it. Gilman et al. vs. (Hamilton et al., 16 Ills., 225), holds that the court can not change the charity to any object not intended by the donor.

In City of Philadelphia vs. Girard's heirs (45 Pa. St., 9), the court said: "In all gifts for charitable uses the law makes a very clear distinction between those parts of a writing conveying them, which declares the gift and its purposes and those which direct the mode of its distribution."

596 In the same opinion the court further said: "And this is the doctrine of cy pres, so far as it has been expressly adopted by us. Not the doctrine 'grossly revolting to the public sense of justice (1 Watts, 226), and carried to the extrav'gant length that it was formerly in England (17 S. & R., 93), by which an unlawful and entirely indefinite charity was transformed by the court or the crown into one that was lawful and definite, though not at all intended by the donor or testator, but a reasonable doctrine by which a well-defined charity, or one where the means of definition are given, may be enforced in favor of the general intent, even where the mode or means provided by the donor fail by reason of their inadequacy or unlawfulness."

From these authorities we may deduce the general rule that courts of equity in the exercise of their ordinary jurisdiction cannot devote any portion of a fund dedicated to charitable uses to any object not contemplated by the donor; that when property is given to a class of objects in general terms and also directed to be applied to one of them in special terms, if its application to that one becomes unlawful or impracticable, the doctrine of cy pres authorizes the court to devote it to one or more of those embraced in the general intent most analogous to the one specially named; that the general intent may not be expressed in explicit terms if the devise or dedication in the light of circumstances authorize the court to infer that such was the donor's wish in that event. The same rules apply when the charity is the result of contributions by a large number of people.

597 It is plain from the evidence before us that the members of the Church of Jesus Christ of Latter-Day Saints contributed the fund in dispute, expecting and wishing it to be applied by the first presidency to church purposes, to objects promoted by the church. We cannot find from the evidence before us that the Mormon people who contributed this fund intended or expected that the fund or any part of it would be appropriated to the support of the common schools of the Territory. In common with non-Mormons the Latter-Day Saints are taxed to maintain the public schools, and to take the money that they contributed for church purposes and devote it also to their support would be unequal and unjust.

Were it simply a matter of discretion with us we would not be disposed to assume superior and peculiar wisdom and say to these people that we will devote the contributions made by you for church purposes to a purpose that you did not intend it, to the support of the common schools, because we think that a more worthy object. We cannot adopt the scheme presented by the plaintiff and reported by the master.

We will now consider the scheme for the application of this fund presented by the defendants. Their plan would vest this property in the first presidency of the church, now consisting of Wilford Woodruff, its president, and George Q. Cannon and Joseph F. Smith, his counselors, and their successors in office in trust to apply the proceeds thereof and to limit

598 its use to the relief and assistance of the poor of the church, and to the building and repair of convenient and necessary places of worship for its members. It appears from the evidence before us that this fund was very largely applied to these two objects by the first presidency prior to the time it was taken from their possession and control. But we were also authorized to infer that at the time this case was tried, in 1888, and prior thereto, the teachers of the church and its missionaries taught by its authority that the practice of polygamy was right, and that the church in that way propagated it, and that a portion of the property in dispute was used to aid and support such teachers and missionaries, and in that way was applied to an immoral and unlawful end. The scheme under consideration, however, would forbid the use of this fund for any such purpose. It requires it to be used for the benefit of needy members, and to be applied to the erection of houses of worship for the Latter-Day Saints. The relief of the needy and distressed of whatever faith cannot be immoral or unlawful.

Nor can we say that the expenditure of money for the erection and repair of convenient and necessary houses of worship for the Mormon people is devoted to an immoral or unlawful purpose.

In the legislation of Congress with respect to polygamy houses of worship, parsonages, and burial grounds are reserved to the church, and the decision remanding this case affirms so much of the decree of the trial court as set such property apart to the church.

599 We come now to another question: Can this court, in the exercise of its ordinary chancery jurisdiction, vest this fund in the first presidency to be applied to the two purposes that we have seen are lawful? This property, as the evidence shows, was given to the church authorities named, to be applied to church purposes in their discretion.

Assuming that a portion of it was so expended by such authorities as to propagate polygamy, can the court now limit the proceeds of the entire fund to the relief of the poor and the erection and repair of houses of worship—two lawful objects, and the ones to which the larger portion of the fund had been devoted?

We may presume that the contributors expected and intended that the first presidency would apply their gifts to such purposes as they might deem practicable and right, and if they should deem any object impracticable and wrong that they would devote the whole of it to such of the objects deemed practicable and right. The church authorities now propose to apply the entire fund to the two purposes named which must be conceded practicable and lawful, and they, on behalf of the entire sect, pray the court to decree that they shall devote it to these two lawful purposes, and that they may be prohibited from applying it to any other.

In the case of Jackson vs. Phillips and others, id., the court said, "When a charitable intent appears on the face of the will, but the terms used are broad enough to allow of the fund being applied either in

600 a lawful or an unlawful manner, the gift will be supported and its application restrained within the bounds of the law."

When the dedication is broad enough to allow the trustee to apply the fund to unlawful as well as lawful purposes the court will limit its application to the lawful ones. When the terms of the gift authorize the trustees to devote the fund to either of two objects, one legal and the other illegal, its application will be confined to the legal purpose and the illegal one will be rejected. "The principle of these cases seems to be the same that although a valid charitable use should happen to be joined by way of *of* alternative with one which is invalid, no matter how, the manner being altogether indifferent, the former will not be prejudiced by its connection with the latter." (Boyle on Law of Charities, p. 232.)

There is English authority entitled to great weight to the effect that if a testator gives one charitable fund to two or more objects in definite proportions, and one fails, the other objects that have not failed may be substituted for the one that has, and the entire fund may be devoted to them, unless the terms of the will exclude such an application.

In the case of Attorney-General vs. Ironmongers Company, 7 English Chancery Reports, 578, Lord Chancellor Brougham said: "When a testator gives one charitable fund to three several classes of objects, unless he excludes by most express provisions the application of one por-

601 tion to the purpose to which the others are destined, it is clear that the court may thus execute his intention in the event of an impossibility of applying that portion to its original destination. The character of charity is impressed upon the whole fund; there is good sense in pre-

suming that, had the testator known that one object was to fail he would have given its appropriate fund to the increase of the funds destined to the objects of his bounty; and there is convenience in acting as he would himself have done. This is the foundation of the doctrine of cy pres." This case was afterwards before the court when Cottenham was lord chancellor, and in considering the rule of construction in such cases, he said:

"It is obviously true that if several charities be named in a will and one fail for want of objects, one of the others may be found to be cy pres to that which has failed; and if so, its being approved by the testator ought to be an additional recommendation; but such other charity ought not, as I conceive, to be preferred to some other more nearly resembling that which has failed."

In such a case the weight of authority in this country as, we think, is that the amount specially directed to be applied to the object that fails will be devoted to any other whether expressly named in the will or dedication or not so named, if the terms of the will or dedication, in the light of the circumstances, authorize the court to infer that such an application is within the general intent of the testator or donor.

602 But the case of Attorney-General vs. The Ironmongers Company is not analogous to the one in hand. In that the trustee was directed to apply one-half of the estate to one object and the other half to two other objects in equal proportions, so that it was necessary to apply the portion which the testator had expressly devoted to the object that failed to other objects—it was necessary to substitute another or other objects.

It appears from the evidence before us that the contributions to the fund in controversy were made with the understanding that they should be applied to church purposes, but that it was optional with the first presidency to which object, and if to more than one, the amount to each. The donations were to all or any as those church officers might determine, and the court is asked to limit the application to two church pur*pur*poses that are lawful. We have no doubt that this court, in the exercise of its ordinary chancery jurisdiction, may limit the application of this fund to the lawful purposes.

Defendant's solicitors also insist that the report of the master and accompanying evidence shows that the church abandoned the practice of polygamy by means of, and in obedience to the manifesto of its president, and a resolution of its general conference adopted on the 6th of October, 1890.

In that manifesto which is in evidence, the following language is found:

"We are not teaching polygamy or plural marriage, or permitting any person to enter upon its practice. * * * Inasmuch as laws
603 . have been enacted by Congress forbidding plural marriages, which laws have been pronounced constitutional by the court of last resort, I hereby declare my intention to submit to those laws and to use my influence with the members of the church over which I preside to have them do likewise. * * * And I now publicly declare that my advice to the Latter-Day Saints is to refrain from contracting any marriage forbidden by the law of the land."

And the resolution adopted by a general conference of the church on motion of Apostle Lorenzo Snow is: "I move that recognizing Wilford Woodruff as the president of the Church of Jesus Christ of Latter-Day Saints, and the only man on earth at the present time who holds the keys of the sealing ordinances, we consider him fully authorized by virtue of his position, to issue the manifesto which has been read in our hearing, which is dated September 24, 1890; and that as a church in general conference assembled we accept this declaration concerning plural marriage as authoritative and binding."

It appears from the evidence reported by the master that Wilford Woodruff, the president of the church, testified that his object in issuing the manifesto was "to announce to the world that the plural marriage had been forbidden by the church and that it could not be practiced thereafter; that it was presented to the quorum of the twelve apostles and accepted by them; that it was afterwards presented to the officers
604 and members of the church assembled at their sixtieth semi-annual conference on October 6th, 1890; that the conference received and adopted it by a unanimous vote; that there were present about ten thousand officers and members; the representation was a fair one * * * from the whole Territory, * * * and other places." The witness further testified in substance that he has never heard of any opposition to it or dissent from it by any member of the church; that to the best of his knowledge the members of the church willingly accepted and adopted it; that it would be contrary to the law of the church for any member of it to enter into or contract a plural marriage; that any person entering into plural marriage after that date would be liable to excommunication from the church; that there had not been any polygamous or plural marriage entered into or contracted by any member of the church to his knowledge since the date of the manifesto; that he has not since that date assented to the practice of polygamy in any way or manner and that he does not know of any other officer of the church that has; that he does not have any hope or expectation that the practice of polygamy will ever be re-established in the future; that all revelations that the church has were accepted by a vote; that he believes in the principle of polygamy and presumes the members of the church do; that a principle may be believed in as a true one and still not be practiced; that a failure of any member to follow the manifesto would become a subject of church discipline; that the intention of the manifesto was to require obedience to all the laws; that
605 he issued the manifesto by inspiration and that he believed it was his duty to do so; that the manifesto and the resolution is the law of the church; the law of God to us; we are required to abandon that doctrine or tenet of our faith in our practices. He was asked:

Q. President Woodruff, do you believe that the principle of plural marriage was revealed to the church through Joseph Smith from the Almighty?

A. I do.

Q. Do you believe that the Almighty has revealed to the church through you that it is discontinued and abandoned?

A. I do.

Q. You believe that?

A. Yes, sir.

The witness further answered "my view is that inspiration is revelation."

The witness further testified in substance that the manifesto also prohibited the practice of unlawful cohabitation. Other witnesses holding high official positions in the church corroborated the testimony of its president, and there is no evidence before us tending to prove that any of the church authorities, or that with their consent, any of its members, since the date of the manifesto, have to their knowledge taught, advised, counseled, or consented to the practice of polygamy or unlawful cohabitation.

If the uncontradicted testimony and evidence before us can be relied upon, it proves that the church authorities and its members regard
606 the manifesto and its resolution of October 16th, 1890, as prohibiting the practice of polygamy, and that they regard this prohibition as the law of God to them. That within the pale of civilization where laws exist against it, the practice of polygamy is wrong, but that outside of this limit it may be rightfully practiced.

Assuming that they believe that the Supreme Law-giver in a revelation to Joseph Smith, the then head of the church, sanctioned polygamy, and in another revelation about forty years afterwards to Wilford Woodruff, then its head, prohibited its practice within the limits mentioned, it follows that they believe that that Law-giver sanctions polygamy where the sentiments of civilization are not against it, and where it is not prohibited by law; but that where such sentiments and laws are against it it is wrong, that the Almighty regards the sentiments of civilization and the will of human law-makers as expressed in obedience to their reason and consciences as binding on the people within their jurisdiction; that he requires obedience to the law of the land.

The theory of civil or municipal government as expressed in the Declaration of Independence is, that it is based upon the will of the people expressed according to the dictates of their reason and conscience. This theory the most of us believe in, and if the Mormon is right, God has in a revelation to them recognized and sanctioned this theory as sound.
607 Assuming that there is a Supreme Being who is the source of all power and wisdom, many of us believe He does so express His will so far as human governments go, through the reason and conscience of mankind in constitutions and laws.

Importance is attached by the master in his report, and counsel lay stress upon the statement of the president that polygamy is right, but that it is wrong to practice it when the sentiments of the people and municipal law is against it.

According to his statement he has an abstract belief in polygamy where laws exist against it, but that it is wrong to practice it. In other words, he believes in the principle in the abstract under such circumstances, but does not believe in it in the concrete.

The government is not authorized to deprive any person of his property against his will, except by forfeiture or escheat according to law, or by appropriating it to the payment of public taxes in the mode the law prescribes, or in pursuance of the law of eminent domain, with just compensation. It cannot divest any individual or any class of the people of their property, or deny to them the right to control it or to devote it to any object they may choose, simply because they may entertain wrong political

or religious beliefs; the doing of either would be a plain violation of those principles of civil and religious liberty which underlie our whole political system. The intent and the resulting act may together be defined as crime and punished; but the intent alone cannot be. The perceptions, the
608 feelings, the beliefs, or the consciences of mankind cannot be regulated by human laws. Such laws would transcend the power of all just governments.

We do not feel authorized to withhold from the Latter-Day Saints the right to devote their property to charitable objects simply because we may think they have wrong beliefs; or to undertake the eradication of such beliefs by denying to them the right to the enjoyment of their property or the right to appropriate it to lawful purposes.

Polygamy having been abandoned by the church, the remaining purposes to which the personal property in question has been dedicated and to which it may be applied by the church appear to be lawful. And in view of this the writer of this opinion is unable to understand upon what principle of law this court can deny to this church the right to appropriate and apply this fund to such purposes. He is of the opinion that it should be vested in Wilford Woodruff, George Q. Cannon, and Joseph F. Smith, its first presidency, and in their successors in office, the agents selected by the church, to be devoted and applied by them to those purposes according to the will of the church and the wishes of its donors. A majority of the court, however, is of the opinion that it should be vested in a trustee selected by the court, and in his successor or successors to be appointed by the court, to be devoted exclusively to the support and aid of the poor of the church, and to the building and repairing of its houses of worship, and that he should be required to give a bond before
609 entering upon his duties sufficient to secure the amount that may come to his hands and his performance of the duties of the trust, and that he should be required to report to the court on the first day of January of each year, his action as such trustee.

A decree will be entered by the court in accordance with this opinion.

We concur:

(Signed) JOHN W. BLACKBURN, *A. J.*
JAMES A. MINER, *A. J.*

610 UNITED STATES OF AMERICA, *ss:*

To the late corporation The Church of Jesus Christ of Latter-Day Saints et al., and George Romney, Henry Dinwoodey, James Watson, John Clark, intervenors, and to Franklin S. Richards, Le Grand Young, and W. H. Dickson, their attorneys, greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington within sixty days from the date of this citation, pursuant to an appeal allowed in the supreme court of the Territory of Utah, wherein the United States of America is appellant, and you, the said late corporation The Church of Jesus Christ of Latter-Day Saints et al., and George Romney, Henry Dinwoodey, James Watson, and John Clark, intervenors, are respondents, to show

cause, if any there be, why the judgment rendered in said supreme court on the 12th day of November, A. D. 1892, should not be corrected and speedy justice should not be done to the parties on that behalf.

Witness the Hon. Chas. S. Zane, chief-justice of the Territory of Utah, this 14th day of December, in the year of our Lord one thousand eight hundred and ninety-two.

[SEAL.]

C. S. ZANE,
Chief-Justice of Utah.

Attest:

JOSEPH P. BACHE,
Clerk Supreme Court of Utah Territory.

Service of a copy of the above citation is hereby admitted this 14th day of December, A. D. 1892.

F. S. RICHARDS,
Att'y for Defts.

611 (Indorsed:) File No. . The United States vs. The Lat Corporation of the Church of Jesus Christ of Latter-Day Saints et al. Citation. Original. Filed in the supreme court Dec. 14, 1892, at Salt Lake City, Utah. Joseph P. Bache, clerk.

612 UNITED STATES OF AMERICA,
Territory of Utah, County of Salt Lake, ss:

I, Joseph P. Bache, clerk of the supreme court in and for the Territory of Utah, pursuant to an appeal allowed in the cause of the United States of America vs. The Late Corporation of the Church of Jesus Christ of Latter-Day Saints et al., do hereby certify that the foregoing pages numbered from one to 611 inclusive, contain a true and correct transcript of the record and proceedings had in said court in said cause.

In testimony whereof, I have caused the seal of the said supreme court to be hereunto annexed at the city of Salt Lake, in the Territory of Utah, this 23rd day of January, in the year of our Lord one thousand eight hundred and ninety-three.

[SEAL.]

JOSEPH P. BACHE,
Clerk Supreme Court of Utah.

(Indorsement on cover:) Case No. 15257. Term No. 887. The United States, appellant, vs. The Late Corporation of the Church of Jesus Christ of Latter-Day Saints et al. Utah Territory supreme court. Filed February 8th, 1893.

3048——15

Office Supreme Court U. S.
FILED.
MAR 13 1893
JAMES H. McKENNEY

Supreme Court of the United States.

OCTOBER TERM, 1892.

UNITED STATES OF AMERICA, Appellant,

vs.

THE LATE CORPORATION OF THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS, AND OTHERS, Appellees.

No. 1283

Appeal from the Supreme Court of Utah Territory.

MOTION TO ADVANCE CAUSE.

Statement of Case.

The appellees, by their solicitors, come and show to the court that on the 30th day of July, 1887, the United States brought suit in equity in the Supreme Court of the Territory of Utah, praying for the dissolution and annullment of the charter of the corporation of the Church of Jesus Christ of Latter-Day Saints, for the appointment of a receiver to take possession of the real and personal property then owned, held, and possessed by the said corporation, and claimed forfeiture to the United States of said real and personal property so held by said corporation. That subsequently a receiver was appointed by said Supreme Court and a decree rendered dissolving said corporation and declaring its

personal property forfeited to the United States; that said cause was appealed to this court, and, on the 25th day of May, 1891, it was therein ordered, adjudged, and decreed as follows, to wit:

"And the court does further adjudge and decree that the late corporation of the Church of Jesus Christ of Latter-Day Saints having become by law dissolved as aforesaid, there did not exist at its dissolution, and do not now exist, any trusts or purposes within the objects and purposes for which said personal property was originally acquired, as hereinbefore set out, whether said acquisition was by purchase or donation, to or for which said personalty or any part thereof could be used, or to which it could be dedicated, that were, and are not, in whole or in part, opposed to public policy, good morals, and contrary to the laws of the United States; and furthermore, that there do not exist any natural persons, or any body, association, or corporation, who are legally entitled to any portion of said personalty as successors in interest to said Church of Jesus Christ of Latter-Day Saints, and the said personal property has devolved to the United States; and not being lawfully applicable to the purposes for which it was originally dedicated or acquired, and to which, at the commencement of this suit, it was being devoted by the said corporation and its controlling authorities, the same ought to be limited and appointed to such charitable uses, lawful in their character, as may most nearly correspond to those to which it was originally destined, to be ascertained and defined (unless in the meantime Congress should otherwise order) by reference to a master for due examination, inquiry, and report thereon, subject to the approval of the court; and to be established, administered, and carried out in such manner and according to such scheme as may be suggested and reported by said master and approved by the court. It is further ordered and decreed that until the ascertainment and determination of such uses and the adoption of such scheme, and until direction be taken for the ultimate funding or investment of the said personal property for the purposes aforesaid, the receiver appointed in this cause do continue in the custody and charge thereof, with all ac-

cumulations, subject to the further order of the court, and (conjointly with the rents and income of the real estate) to the payment of the costs and expenses of this proceeding and of the receivership aforesaid. The reference herein provided for to be made by a separate order."

That on the 1st day of July, 1890, pursuant to said decree, a master was duly appointed by the Supreme Court of the Territory of Utah to ascertain and define the charitable uses, lawful in their character, to which the property mentioned in said decree should be devoted, and to report a scheme therefor, subject to the approval of the court; and after hearing the testimony and making due examination of the matter, the master reported a scheme, with the testimony taken, to the said Supreme Court of Utah Territory, to which report and scheme exceptions were duly filed. After hearing the arguments of counsel and being fully advised in the premises, the said Supreme Court of the Territory of Utah, on the 12th day of November, 1892, made and entered the following order or decree in said cause, to wit:

In the Supreme Court of Utah Territory.

Regular June Term, 1892.

Saturday, November 12th.

The United States, Plaintiff,
vs.
The Late Corporation of the Church of Jesus Christ of Latter-Day Saints *et al.*, Defendants.

This cause having come on to be heard before this court at a former day of this term upon exceptions to the master's report filed herein on the 19th day of October, 1891, and the same having been argued by counsel for the respective parties and submitted to the court, and the court being now fully advised in the premises, it is hereby ordered, adjudged, and decreed that the scheme for the disposition of the fund in controversy, reported and suggested to this court for adoption by the master

in his said report, be, and the same is hereby, disapproved and rejected.

And it is further ordered, adjudged, and decreed that said fund and the whole thereof be, and the same is hereby, vested in Leonard G. Hardy in trust, to be by him invested to the best advantage, having in view the security of the fund as well as the income to be derived from the investment.

And to collect and receive the proceeds of all such investments and to apply such proceeds, or such portion thereof, and so much of the principal from time to time as may be necessary for that purpose, to the support and aid of the poor members of the Church of Jesus Christ of Latter-Day Saints, and to the building and repairing of houses of worship for the members of said church.

And it is further ordered, adjudged, and decreed that the said Leonard G. Hardy be required to give a bond to the Government of the United States in the sum of five hundred thousand ($500,000) dollars, to be approved by this court or the chief justice thereof, and to be conditioned for the faithful performance of his duties as such trustee.

And it is further ordered, adjudged, and decreed that the said Leonard G. Hardy as such trustee, be, and he is hereby, required to make a report to this court on the 1st day of January of each year of his administration of said trust.

Opinion of the court by Zane, C. J.; Blackburn and Miner, J. J., concurring.

That an appeal was taken from said order or decree by the United States to this court, where the said cause is now pending.

Reasons for Advancement.

The appellees now move the court to advance this cause upon the docket and assign the same for final hearing at an early date, to be fixed by the court, and in support of their said motion the said appellees assign the following reasons, to wit:

I. This is a case in which the United States are concerned as a party.

II. It is a case which involves matters of public interest very nearly and seriously affecting a large portion of the citizens, residents, and property owners of the Territory of Utah.

III. The property involved in this litigation consists of a fund of about $400,000, which is being depleted by reason of the expense attendant upon its administration and retention in the hands of a receiver.

IV. The sum of $37,760 has already been paid to the receiver and his counsel for their fees in this case, and other expenses have been incurred in the administration of the fund, amounting in the aggregate to $72,734. The fund has diminished in the hands of the receiver $36,814, as appears from the certificate of the clerk of the Supreme Court of Utah Territory, which is hereto attached and made part hereof, marked Exhibit "A."

V. If the case is left to take its place on the calendar a still greater diminution of the fund will occur, and it is not in the course of equity to permit the subject of the litigation to be consumed and destroyed by the expenses of administration.

VI. The order or decree from which this appeal is taken is not such a final judgment or decree as is appealable to this court, but is merely a supplementary order made in pursuance of the final decree heretofore rendered in this case, and this appeal should therefore be dismissed.

VII. The appeal can not be effectual nor a reversal obtained, because this court will not review the evidence in such a case as the one at bar.

For the foregoing and other good and sufficient reasons appearing of record in this cause, the appellees pray the court to advance the case on the docket and assign it for final hearing at the earliest date convenient for the court.

F. S. RICHARDS,
Solicitor for Appellees.

In the Supreme Court of Utah Territory.

The United States, Plaintiff,
vs.
The late Corporation of the Church of Jesus Christ of Latter-Day Saints, *et al.*, Defendants.

I, Joseph P. Bache, clerk of the Supreme Court in and for the Territory of Utah, do hereby certify that I have made a careful and thorough search of the accounts, vouchers, and statements of the receivers in the above-entitled cause, from the date of the beginning of the receivership, to wit, the 10th day of November, A. D. 1887, up to and including the 31st day of January, A. D. 1892, and find therefrom the following facts:

That there has been paid as compensation to the said receivers, for said term, the sum of $22,500.

That there has been paid as fees for attorneys, for said term, the sum of $15,260.

That the total expenses incurred during said term, including the two items above, have been $72,734.08.

That the fund has diminished since the decree was rendered the sum of $36,814.

Witness my hand and the seal of said court this 21st day of February, A. D. 1893.

JOSEPH P. BACHE,
[SEAL.] *Clerk Supreme Court of Utah.*

Office Supreme Court U. S.
FILED.
OCT 4 1893
JAMES H. McKENNEY,
CLERK.

In the Supreme Court of the United States.

OCTOBER TERM, 1893.

THE UNITED STATES, APPELLANT,
v.
THE LATE CORPORATION OF THE Church of Jesus Christ of Latter-Day Saints *et al.* } No. 887.

APPEAL FROM THE SUPREME COURT OF THE TERRITORY OF UTAH.

BRIEF FOR THE UNITED STATES.

In the Supreme Court of the United States.

OCTOBER TERM, 1893.

THE UNITED STATES, APPELLANT,
v.
THE LATE CORPORATION OF THE Church of Jesus Christ of Latter-Day Saints *et al.*
No. 887.

BRIEF FOR THE UNITED STATES.

The subject presented for consideration in this case is the proper disposition to be made of the personal fund formerly held by the late corporation of the Church of Jesus Christ of Latter-Day Saints, and now in the hands of the supreme court of the Territory of Utah.

By the decree of this court, made in this case on May 25, 1891, reported in 140 U. S. R., 666, it was provided *inter alia.*

> * * * and the said personal property has devolved to the United States, and not being lawfully applicable to the purposes for which it was originally dedicated or acquired and to which, at the commencement of this suit, it was being devoted by the said corporation and its controlling authorities, the same ought to be limited and appointed to such charitable uses,

> lawful in their character, as may most nearly correspond to those to which it was originally destined, to to be ascertained and defined (unless in the meantime Congress should otherwise order) by reference to a master for due examination, inquiry and report thereon, subject to the approval of the court, and to be established, administered, and carried out in such manner and according to such scheme as may be suggested and reported by said master and approved by the court.

The master considered and returned with his report two schemes for the application of said fund.

One of these schemes proposed by certain members on behalf of all the members of the Mormon Church (pp. 186–191 of the record) provided that the fund should be—

> * * * vested in the first presidency of the church, or body of religious worshipers, and their successors in office, in trust, to invest the same, and to apply the proceeds and income thereof to the relief and assistance of poor and distressed members of said church or body of religious worshipers according to their best judgment and discretion, and to the building, maintenance, or repair of convenient and necessary places of worship for the members of the said church.

The other scheme proposed on behalf of the United States (p. 192) provides—

> That said fund may properly be applied to the use and for the benefit of the common schools of the Territory of Utah, and that by said application the Mormon people, members of the Church of Jesus Christ of Latter-Day Saints,will be more generally benefited than by any other application of the fund.

The master returned his report (pp. 83–89) and recommended therein, for the consideration of and adoption by the court, the following scheme for the application of the fund:

> 1. That the said fund be constituted a permanent school fund for the perpetual endowment of the public schools of the Territory of Utah.
>
> 2. That a commissioner be appointed by the court to have custody and control of the fund, to loan the same within the Territory, in bulk or in parcels, on real estate and personal security, or invest the same in school or other municipal bonds within the Territory, either at the discretion of the commissioner or under the direction of the court.
>
> * * * * *
>
> 5. That the income from said fund remaining after paying the salary and other expenses of the care of the fund, be by the said commissioner apportioned rateably among the several counties, according to the number of children of school age in each, as shown by the last preceding school census, and the portion so allotted to each county be, on the first day of January of each year, paid over by said commissioner to the treasurer of said county, to be by said treasurer disbursed for the maintenance of the public schools of said county in like manner and proportion as school taxes collected in said county are disbursed.

The cause was heard on this report of the master with the evidence and exhibits accompanying it, and the exceptions to said report filed on behalf of the members of the church.

On the 12th of November, 1892, the court made a final decree in the cause, which provided—

> * * * that the scheme for the distribution of the fund in controversy, reported and suggested to this court for adoption by the master in his said report, be, and the same is hereby, disapproved and rejected. * * * That said fund, and the whole thereof, be, and the same hereby is, vested in Leonard G. Hardy, in trust, to be by him invested to the best advantage, having in view the security of the fund as well as the income to be derived from the investment, and to collect and receive the proceeds of all such investments, and to apply such proceeds, or such portion thereof, and so much of the principal, from time to time, as may be necessary for that purpose, to the support and aid of the poor members of the Church of Jesus Christ of Latter-Day Saints, and to the building and repairing of houses of worship for the members of said church.

From this decree the United States has taken this appeal. The principal inquiry presented on the appeal obviously is this: Is the application of this fund to the "support and aid of the poor members of this church, and to the building and repair of houses of worship for the members of the said church," an appointment of it "to such charitable uses, lawful in their character, as may most nearly correspond to those to which it was originally destined?"

It is found to be a fact in this case (pp. 77–78)—

> That the said personal property hereinbefore set out had been accumulated by said late corporation prior to the passage of said act of February the 19th, 1887, and that such accumulation extended over a

period of twenty years or more. That prior to and at the time of the passage of said act the said personal property had been used for and devoted to the promulgation, spread, and maintenance of the doctrines, teachings, tenets, and practices of the said church of Jesus Christ of Latter-Day Saints, and the doctrine of polygamy, or plurality of wives, was one of the said doctrines, teachings, tenets, and practices of the said late church corporation; but only a portion of the members of said corporation, not exceeding twenty per cent of the marriageable members, male and female, were engaged in the actual practice of polygamy. That since the passage of said act of Congress of February 19th, 1887, the said voluntary religious sect known as the Church of Jesus Christ of Latter-Day Saints has comprised the great body of individuals who formerly composed the membership of said corporation, and the organization, general government, doctrines, and tenets of said voluntary religious sect have been and now are substantially the same as those of the late corporation of the Church of Jesus Christ of Latter-Day Saints.

That certain of the officers of said religious sect regularly ordained, and certain public preachers and teachers of said religious sect, who are in good standing and who are preachers and teachers concerning the doctrines and tenets of said sect, have, since the passage of said act of Congress of February 19, 1887, promulgated, taught, spread, and upheld the same doctrines, tenets, and practices, including the doctrine of polygamy, as were formerly promulgated, taught, and upheld by the said late corporation; and the said teachings of the said officers, preachers, and teachers have not been repudiated or dissented from by said voluntary religious sect, nor have their teachings and preachings, or their actions, created any division or schism in said voluntary religious sect.

That any dedication or setting aside of any of the personal property hereinbefore set out as having belonged to the late corporation, to the uses and purposes of, or in trust for, the members of the late corporation of the Church of Jesus Christ of Latter-Day Saints, or any of them, would practically and in effect be a dedication and setting aside of said personal property to the uses and for the purposes of, and in trust for, the unincorporated religious sect known as the Church of Jesus Christ of Latter-Day Saints.

That at the commencement of this suit all of said personal property was in the possession of the said William B. Preston, who held in trust and for the benefit of said corporation.

Here, then, is a distinct judicial ascertainment of the objects to which this fund was originally destined, as well as those to which it was applied before and since the disincorporation of the church, as well as the result which would follow from allowing the personal fund to remain in the hands of the members of this church. The learned judge who delivered the opinion of the supreme court of the Territory of Utah has stated with fullness the considerations which impelled that court to the conclusions expressed in its decree. It states on page 202:

Behind the legal title to the funds in controversy in the late corporation lie beneficial rights belonging to natural persons. Out of the confidence reposed in the church officials who controlled them an obligation arose that they would faithfully apply these funds according to the general understanding of their contributors. The Supreme Court of the United States, in its opinion directing these proceedings, said: "The property in question has been dedi-

cated to public and charitable uses. It matters not whether it is the product of private contributions made during the course of half a century, or of taxes imposed upon the people, or of gains arising from fortunate operations in business, or appreciation in values; the charitable uses for which it is held are stamped upon it by charter, by ordinance, by regulation, and by usage in such an indelible manner that there can be no mistake as to their character, purpose, or object." (*Mormon Church* v. *United States*, 136 U. S. R., p. 50.)

In its opinion the court does not distinguish and consider singly and separately the various charitable objects to which the property in controversy was dedicated. In fact, the inquiry by the trial court had not gone that far; they were considered in a lump, so to speak, and the whole lump appears to have been regarded as tainted with polygamy. The court on appeal could not look at the merits of each object of charity separately, because the findings or the evidence did not disclose the objects singly or their peculiar merits.

In his inquiry the master advanced, and we are permitted to see, the objects to which the fund had been devoted. In the light of the evidence reported by him we can distinguish the good from the bad, the worthy from the unworthy, and understand to which and in what proportions the church authorities had applied the fund before it was taken out of their hands.

And the court proceeds in its opinion further to argue that the support and aid of the poor and the building and repair of houses of worship are lawful and meritorious objects of charitable trusts; that polygamy was the only object that the Supreme Court of the United States

found to be unlawful; that the decree of that court can not be construed to condemn those qualities as vicious in the Latter-Day Saints that we regard as virtues in other people, and very much more to the same effect. All of which line of argument omits altogether from consideration one aspect of this case which should be of controlling influence.

The Mormon people had erected a State on the public domains and had established a government, clothed with all the forms and invested with all the powers needful to the exercise of its varied and complex functions. This State is thus described in a report of the Judiciary Committee of the Forty-ninth Congress, first session, No. 2735:

> The proposed State was about 700 miles from east and west and from north to south, comprising about 490,000 square miles, or 313,600.00 acres, an area nearly as large as that of nearly all the States situated south of the Potomac and Ohio rivers and east of the Mississippi River. It embraced the present Territories of Utah and Arizona, the State of Nevada, and considerable portion of California, Idaho, Wyoming, and Colorado.

By a charter of incorporation they have been clothed with "power and authority to sue and be sued, defend and be defended in all courts of law and equity in this State, *to establish order* and regulate worship, and *hold and occupy real and personal estate*, and have and use a seal, which they may alter at pleasure."

The system of government thus established was in all its institutions and distinctive characteristics theocratic.

The report of the Judiciary Committee, already referred to, affords this striking characterization:

> The Mormon religion is based upon a supposed revelation, of which its priesthood is the inspired interpreter and expounder, making their influence almost absolute and their declarations almost the voice of God. The sincere among its adherents are victims of a delusion, which the insincere will be prone to maintain and promote from sinister motives and for selfish and ambitious purposes. The awful sanctions of the church give force and authority to the civil mandate. The union of the ecclesiastical power with that of the government, and of the civil and military in the same hands, made Brigham Young at once the hierarch of the church, the civil ruler of the state, and the commander of its armies; church and state, civil and military power, were united in him as the autocrat of Deseret and Utah.

In the conduct of its affairs, this Mormon government, up to the institution of this suit, had amassed properties, real and personal, aggregating in value many millions of dollars. Under acts of Congress of the United States all of this property has been seized, the real estate forfeited to the Government, the corporation deprived of its charter, and the personal property, by force of the dissolution of the corporation, has also passed to and become the property of the United States.

The bill in equity in this case was brought to secure the preservation and proper disposition of this fund.

This extraordinary and unprecedented exercise of power on the part of the United States Government was induced and can be justified only by those practices and that man-

ner of life of the Mormon people, which resulted as the natural and necessary consequence from the tenets, doctrines, and teachings of the Mormon Church. Only acts which threatened corruption to the morals and destruction to the civilization of the country could justify this forceful interposition of governmental power, this deprivation of chartered rights—this seizure, sequestration, and actual confiscation of private property.

The three coördinate branches of Government have concurred in the heroic treatment which has been found necessary to the extirpation of a moral leprosy and the eradication of a fatal disease from the body politic.

The hand of offended and outraged justice was directed more especially against the practice of polygamy. Under our system of government the liberty of conscience is without restraint and it is allowed to all men to indulge in such speculative beliefs and adopt such systems of philosophy and theology as they may prefer without molestation or rebuke from the civil power. It is a cherished truism, expressed in our bills of rights "that it is time enough for the rightful purposes of civil government for its officers to interfere when principles break out into overt acts against peace and good order."

Here, however, have the principles of this strange belief broken out into flagrant and continued acts of—what the common sense of mankind condemns—as gross immorality and indecency, until at length the General Government, after much long suffering, has sought to arrest the evil by depriving the association of all its corporate powers and privileges and of the more dangerous instrumentalities for wrongdoing which its accumulated wealth did afford.

But now it is proposed by the decree of the supreme court of Utah, upon the reasonings of the opinion of that court, that all this property, which by force of the acts of Congress and the decrees of the Supreme Court of the United States has been taken away from this people, shall again be restored to it upon the attenuated pretext of a public charity with noble and commendable objects which this court should protect and maintain.

Why resort to so palpable an indirection to secure an end that can be more worthily and honorably attained by a reversal of the decrees which have been entered and a repeal of the laws which have been enacted. The restoration of it to any extent to the hands from which it was taken, and its application in any degree to the objects which the Mormon people have bound themselves by their superstitious vows to maintain, would be a confession of folly on the part of this Government, if not, indeed, a self-conviction of crime.

We need not linger long over the mere form of high-sounding phrases and curiously contrived terms. We must look directly and honestly to the real object had in view here and to the certain and necessary result of the scheme which this decree prescribes.

The decree, it is true, does direct that the fund shall be placed in the hands of one who shall hold it as a *trustee*. What are the objects of this trust, who are the beneficiaries, and what will their rights be forever should this trust be effectuated? They are the members of the Church of Jesus Christ of Latter-Day Saints. Those, and those only, who profess the faith and submit to the discipline

of that religious society can claim to be entitled to the benefits of this trust.

Here is a reward offered by this decree to all who now stand without the pale of this church to come within that pale.

Here it is proposed to apply this fund to enlarging the facilities and increasing the means for propagating doctrines, the necessary and logical fruits of which this Government has in the most solemn form reprobated and condemned.

The Government may not, to be sure, repress, or in anywise interfere with the beliefs which any may entertain, however obnoxious such beliefs may be to decency, good order, and good government. But can anything justify the Government in gratuitously affording the means for the inculcation of such beliefs, for preaching it from the pulpits and rewarding with alms those who profess it?

It is said, however, that all that was evil in this system of Mormonism was the feature of polygamy and that that has been extirpated, and that all that now remains is admirable and excellent and worthy of favor.

It is doubtless true, as President Woodruff has testified, that he, by his official proclamation, has advised his people to refrain, from the *practice* of polygamy. It may be true, and doubtless is, that, terrified by the storm of just and righteous indignation of civilized Christendom, and affrighted by the stern and resolute action on the part of the Federal Government, these people may, from an unworthy policy of self-preservation, have agreed among themselves

to refrain, for a time, from the practice of one of the essential and cardinal doctrines of their church. And yet it stands as an ascertained fact in this case (p. 78), that since the passage of the act of Congress of February 19, 1887, "they have promulgated, taught, spread, and upheld the same doctrines, tenets, and practices, including the doctrine of polygamy, as were formerly taught and upheld by the late corporation, and that these teachings have not been repudiated or dissented from, nor have they created any division in this sect."

It may not be improper to refer here to what has already appeared in the printed arguments in this case to a statement of the doctrines of this church made by one of the historians of this people. Tullidge, in his history of Salt Lake City, p. 459, says:

> The revelation commanding the principle of the plural marriage, given by God, through Joseph Smith, to the Church of Jesus Christ of Latter-Day Saints, in the first paragraph, has the following language: "Behold I reveal unto you a new and everlasting covenant, and if ye abide not in that covenant then are ye damned. For none can reject this covenant and be permitted to enter into my glory." With this language before us, we can not view plural marriage in any other light than as a vital principle of our religion. Let the revelation appear in the eyes of others as it may, to us it is a divine command of equal force with any ever given by the Creator of the world to his children in the flesh.

It is to erect and keep in repair churches in which these vital principles of religion may be taught from the pulpit. It is to feed and clothe those who profess faith

in such doctrines; that it is proposed by this decree that the fund here shall be placed in the hands of a trustee to be forever applied.

But suppose it was true that in faith as well as in practice polygamy has been abandoned by these people, should the Government now apply this fund exclusively to the benefit of those who did sometime profess and practice this evil? Should it not rather be applied to the formation and development of a public sentiment inimical to the doctrine of polygamy? Such an object has already been recognized and approved by the supreme judicial court of Massachusetts, as one worthy to be effectuated as a deserving charity. The case of *Jackson* v. *Phillips et al.* (14 Allen, 539), so frequently cited and so confidently relied on by both counsel and court in the course of this litigation, was a case in which a testator had bequeathed a sum of money to trustees to be expended for the preparation and the circulation of literature to create a public sentiment that would put an end to negro slavery in this country, and a further sum for the benefit of fugitive slaves who might escape from the slave-holding States in the Union from time to time.

Before the case which presented this will to the court for construction and execution was finally decided, slavery and fugitive slaves had ceased to exist in the land, and the question then arose as to the proper disposition to be made of the funds. That court decided that—

> Neither the immediate purpose of the testator, the moral education of the people, nor his ultimate object to better the condition of the African race in this country has been fully accomplished by the abolition

> of slavery. * * * Slavery may be abolished, but to strengthen and confirm the sentiment which opposed it will continue to be useful and desirable so long as selfishness, cruelty, the lust of dominion, etc., have a place in the hearts of men.

With how much greater force may it be urged here that, although the practice of polygamy may be now suspended, yet, while the doctrines and tenents which defended and sustained it remain as essential and vital principles in the creed of the church, the fund which has been rescued from the Mormon sect should now be applied by the Government, in whose wisdom and by whose force it has been thus sequestered, to strengthen and confirm the sentiment which has opposed and condemned it.

By what means can the sentiment which justifies and sustains polygamy in that community be more surely and strongly encouraged and fostered than by applying the fund, now in the hands of the court, to the maintenance of churches from whose desks this doctrine will be forever inculcated as an article of religious faith, and by rewarding with liberal alms all those who may come in and accept and profess this prescribed faith?

In *Mormon Church* v. *United States* (136 U. S. R., 49) this court has said:

> The question, therefore, is whether the promotion of such a nefarious system and practice, so repugnant to our laws and to the principles of our civilization, is to be allowed to continue by the sanction of the Government itself, and whether the funds accumulated for that purpose shall be restored to the same unlawful uses as heretofore to the detriment of the true interests of society.

The device of placing this fund in the hands of a trustee is plainly inadequate to secure its application to the uses to which it is limited by the decree. The individual in whom that trust may now be reposed will doubtless execute it with jealous fidelity; but when in the course of time this cause, with all the interests with which it is freighted, passes from the docket of the court, and the jurisdiction of the court over parties and subject has ceased—when by death, resignation, or removal, the functions of this trustee have ended—who will there be in this world to guard and exact the further faithful execution of the trust? There will be no reversioners of this fund; there will be no "natural persons" interested in guarding this interest. The members of the Mormon Church alone will feel and exert any solicitude as to its preservation and application.

Slowly it may be, but surely, the lustful hand whose grip has been loosened by the fiat of the law will seize and hold it with an energy strengthened by time and employ it with a cunning and acuteness sharpened by bitter experience. Who will there be to judge of the fitness and fidelity of the trustees hereafter to be appointed? What check or guard does this decree contrive and establish against the future application of this fund to the propagation of polygamy, which yet remains a vital and cardinal doctrine of the church? What boots it to say that the erection of houses of worship and the maintenance of the poor of the church are lawful and meritorious objects of a public charity when no means are provided for confining the application of this fund to these objects

alone? When negro slavery was abolished by the armed hand of Federal power it was never suggested or allowed, by any philanthropist whose gentle spirit was wounded by the existence of that institution, that it would be enough if the people of the slave-holding States would but promise to forego and forbear the exercise of their rights of proprietorship, but it was demanded and exacted, as a condition precedent to the rehabilitation of those States, as members of the Federal Union, that they should each ingraft as an abiding feature of their fundamental law that both the practice and the principles upon which it had been defended should be abandoned forever.

THE SCHEME PROPOSED AND RECOMMENDED BY THE MASTER.

By what process of elimination the exclusion of the education of the young from the list of objects to which this fund was originally destined has been reached, is not apparent. Can it indeed, be true that a system of government so admirably contrived for the development of the material interests of the people as the Mormon government unquestionably was should have made no provision for the education and development of the intellectual? We know historically as well as from this record that the amplest provision was made for the systematic education of the Mormon youth. With what sort of propriety can it be then insisted, as it seems to be in the opinion of the court, that the building of churches and caring for the poor were the *only* original objects of this charity? It can not be denied that a nobler charity can hardly be con-

ceived than one having for its object the liberal education of the young. Does it not nearly correspond to those objects to which this fund was originally destined? What were those objects? They are nowhere stated more concisely or so authentically as in the findings of facts (pp. 77, 78), where they are ascertained to be "the promulgation, spread, and maintenance of the doctrines, teachings, tenets, and practices of said Church of Jesus Christ of Latter Day Saints.

Nothing appears in that definition about the erection of houses of worship and taking care of poor members of the church. These may have been, and doubtless were, incidents in the attainment of those objects; but were they incidents of greater importance and interest to the whole body of the people than the education of their youth?

So far as the doctrines, teachings, tenets, and practices of this church were vicious and hurtful, they have been reprobated, forbidden, and condemned; so far as they were lawful, meritorious, and useful, can a safer and more admirable means and agency for their inculcation and dissemination be contrived than the schoolhouse and the schoolmaster, which afford in addition the means of instruction in other and more desirable departments of learning?

Certain it is that both Congress, in the act referred to, and this court, in the opinion reported in 136 U. S. R., 50, have concurred in the view that as to the proceeds of the real estate forfeited to the Government no wiser or more useful application of it could be contrived than to the public schools of Utah.

Much erudition has been displayed in the opinion of the courts and in the arguments of counsel, in the learning upon charitable trusts and the application of the doctrine of *cy pres*.

It would be the paltriest pedantry to fill the pages of this brief with quotations from text-books and reports. If, in the consideration of the questions now presented, it be found necessary to have recourse to this doctrine at all, all that is needful for guidance in the law will be found collected in Perry on Trusts, Chap. 23, *Jackson* v. *Phillips*, 14 Allen, 539; *Mormon Church* v. *United States*, 136 U. S. R., 1.

The objection is suggested in the opinion of the lower court that the application of this fund in accordance with the scheme recommended by the master would be to—

> Devote and appoint it to a use not intended by its donors, and to which it was not dedicated * * * It is plain from the evidence before us that the members of the Church of Jesus Christ of Latter-Day Saints contributed the fund in dispute, expecting and wishing it to be applied by the first presidency to church purposes—to objects promoted by the church. We can not find from the evidence before us that the Mormon people who contributed this fund intended or expected that the fund, or any part of it, would be appropriated to the support of the common schools of the Territory. In common with non-Mormons the Latter-Day Saints are taxed to maintain the public schools, and to take the money that they contributed for church purposes and devote it also to their support would be unequal and unjust.

Just where it appears in this record that the contributors of this fund did *not* intend that any portion of it

should be applied to educational purposes we have been unable to discover. Nor do the sources from which alone the evidence has been derived, as to the "wishes and expectations" of those contributors as to its appropriation, impress us as either authentic or reliable. It has not been derived from the actual contributors themselves, but from the officers of the Mormon Church, the original defendants here. For example, Mr. George Q. Cannon, when asked (p. 95) to state what he knew about the intention of the donors who contributed this money and property, answered as follows:

> They were donated for religious and charitable purposes, and the disposition of it, as to how it should be expended, all that is left, and *entirely*, to the first presidency of the church. I know that to be the feeling of a great many contributors myself.

And in immediate connection with that statement is the further declaration that from $5,000 to $10,000 had been applied to the relief of "poor Indians," who certainly were not members of the Mormon Church. And so, on page 98, it appears from this witness that this church owned a theater, "for theatrical purposes," "for the purposes of amusement," and on page 100, that part of its money was expended "For the development of the country," "defraying the expenses of circulating literature." So on page 108, "struggling settlements have received aid in building dams, in constructing canals, and purposes of that kind—to aid them in their straitened condition.

From all of which it would seem that the highest officers of the Mormon Church had not considered or acted

on the belief that the funds held by the church had been dedicated exclusively to the "erection and repair of their houses of worship and the care of the poor members of the Church."

And equally erroneous is the notion that the education of children was not one of the objects to which this fund was applied. On page 141 it appears that to "church schools" the sum of $25,000 had been expended shortly before the time the witness testified. These are schools in which the Book of Mormon, the doctrine and covenants will be taught "to a greater or less extent."

Mr. Rawlins, superintendent of public schools of Salt Lake City, testifies (p. 165):

> * * * We had in the public schools last year an approximate enrollment of 6,500 pupils. We had suitable school accommodations for only about a thousand pupils.

Free schools were first established in the city in 1890. In 1889 the attendance of the city was under 500. In 1890 it was 6,368.

Dr. John R. Park, president of the University of Deseret, testifies (p. 168) that he had traveled over the Territory, visiting all the schools that he could reach, and found the schools held in the houses of worship for members of the Mormon Church. The majority of the population were members of the Mormon Church. He found (p. 170) that the need of school houses was urgent in the interest of education in the Territory, because—

> It did not really satisfy the desires of the people then; in their desires to educate their children they

would, as I understand them, have built better school-houses and furnished better accommodations if they could have afforded to do so.

Mr. W. M. Stewart was superintendent of schools for Salt Lake City and County. He testifies (p. 174) that the Mormon enrollment for Salt Lake County was 6,057, the non-Mormon enrollment, 1,131. The enrollment for the city was 4,300.

Dr. P. L. Williams, at one time the Territorial commissioner of schools, visited the schools of the Territory in 1887, and (on p. 179) says that he "deemed them substantially Mormon schools at the time."

From all which it would seem that no other object appeals so strongly for support in Utah as do the schools, and that these are substantially Mormon schools, and hence the application of the fund to this object would not operate to divert it from the Mormon people, but would restore it to them in such manner as to fulfill most worthily the purposes and intent with which they originally contributed it.

HOLMES CONRAD,
Assistant Attorney-General.

Office Supreme Court U. S.
FILED,
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JAMES H. McKENNEY,
CLERK.

Supreme Court of the United States.

OCTOBER TERM, 1893.

THE UNITED STATES OF AMERICA,
APPELLANT,

v.

THE LATE CORPORATION OF THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS ET AL.,
APPELLEES.

No. 887.

Appeal from the Supreme Court of Utah Territory.

BRIEF FOR THE APPELLEES.

FRANKLIN S. RICHARDS,
For Appellees.

WASHINGTON, D. C.:
GIBSON BROS., PRINTERS AND BOOKBINDERS.
1893.

Supreme Court of the United States.

OCTOBER TERM, 1893.

THE UNITED STATES OF AMERICA, Appellant,

vs.

THE LATE CORPORATION OF THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS *et al.*, Appellees.

No. 887.

Appeal from the Supreme Court of Utah Territory.

BRIEF FOR THE APPELLEES.

Statement of Case.

On the 30th day of July, 1887, the United States brought suit in equity in the Supreme Court of the Territory of Utah, praying for the dissolution and annulment of the charter of the corporation of the Church of Jesus Christ of Latter-day Saints, for the appointment of a receiver to take possession of the real and personal property then owned, held, and possessed by the said corporation, and claiming forfeiture to the United States of said real and personal property so held by said corporation (Record pp. 1 to 5).

The suit was brought under section 17 of an act of

Congress, which took effect March 3d, 1887, entitled "An act to amend an act entitled 'An act to amend section 5352 of the Revised Statutes of the United States, in reference to bigamy, and for other purposes,' approved March 22, 1882."

Said section is as follows:

That the acts of the Legislative Assembly of the Territory of Utah, incorporating, continuing or providing for the corporation known as the Church of Jesus Christ of Latter-day Saints and the ordinance of the so-called General Assembly of the State of Deseret incorporating the Church of Jesus Christ of Latter-day Saints, so far as the same may now have legal force and validity, are hereby disapproved and annulled, and the said corporation, in so far as it may now have or pretend to have any legal existence, is hereby dissolved; that it shall be the duty of the Attorney-General of the United States to cause such proceedings to be take in the Supreme Court of the Territory of Utah as shall be proper to execute the foregoing provisions of this section and to wind up the affairs of said corporation conformably to law; and in such proceedings the court shall have power, and it shall be its duty, to make such decree or decrees as shall be proper to effectuate the transfer of the title to real property now held and used by said corporation for places of worship, and parsonages connected therewith, and burial grounds, and of the description mentioned in the proviso to section thirteen of this act and in section twenty-six of this act, to the respective trustees mentioned in section twenty-six of this act; and for the purposes of this section said court shall have all the powers of a court of equity.

24 Statutes, 638.

Section 13, referred to in the foregoing, is as follows:

That it shall be the duty of the Attorney-General of the United States to institute and prosecute proceedings to forfeit and escheat to the United States the property of

corporations obtained or held in violation of section three of the act of Congress approved the first day of July, eighteen hundred and sixty-two, entitled "An act to punish and prevent the practice of polygamy in the Territories of the United States and other places, and disapproving and annulling certain acts of the Legislative Assembly of the Territory of Utah," or in violation of section eighteen hundred and ninety of the Revised Statutes of the United States; and all such property so forfeited and escheated to the United States shall be disposed of by the Secretary of the Interior, and the proceeds thereof applied to the use and benefit of the common schools in the Territory in which such property may be: *Provided*, That no building, or the grounds appurtenant thereto, which is held and occupied exclusively for purposes of the worship of God, or parsonage connected therewith, or burial ground, shall be forfeited.

Ib. page 637.

Section 26 of said act is as follows:

That all religious societies, sects, and congregations shall have the right to have and to hold, through trustees appointed by any court exercising probate powers in a Territory, only on the nomination of the authorities of such society, sect, or congregation, so much real property for the erection or use of houses of worship, and for such parsonage and burial grounds as shall be necessary for the convenience and use of the several congregations of such religious society, sect, or congregation.

Ib. page 641.

Section 3 of the act of July 1, 1862, is as follows:

That it shall not be lawful for any corporation or association for religious or charitable purposes to acquire or hold real estate in any Territory of the United States during the existence of the territorial government of a greater value than fifty thousand dollars; and all real estate acquired or held by any such corporation or association

contrary to the provisions of this act shall be forfeited and escheat to the United States: *Provided*, That existing vested rights in real estate shall not be impaired by the provisions of this section.

12 Statutes, 501–2.

A receiver was appointed by the Supreme Court of Utah, who took possession of all the property of the Church, both real and personal, and still holds the same.

While the case was pending in the Supreme Court of the Territory, George Romney, Henry Dinwoodey, James Watson, and John Clark, as intervenors, by leave of the court, filed a petition in behalf of themselves and all the members of the Church of Jesus Christ of Latter-day Saints.

The petition recites the appointment of the receiver, and describes all of the real estate and personal property seized and held by him; that said Church became possessed of all said real and personal property in said petition described and mentioned, by the voluntary contributions, donations, and dedications of its members, to be held, managed, and applied to the use of said Church for the maintenance of its religion and charities; that said property is being wrongfully withheld and diverted by said receiver from the purposes for which it was donated, dedicated, and granted; that said petitioners and the said members of said Church, on whose behalf said petition is filed, are equitably the owners of said property, and beneficially interested therein, and are interested to prevent the diversion thereof from said religious and charitable purposes.

The prayer of the petition is that, if upon final hearing the Church corporation be held and decreed dissolved, then, and in that case, a decree may be rendered declaring that the said property belongs to the individual

members of said Church, and that they are authorized to appoint a trustee or trustees to hold, manage, and apply such property and money to the purposes for which it was originally given, and that the receiver appointed by the court deliver the possession of said property and its proceeds and income to such trustee or trustees as may be named or appointed at a general conference of the members of said Church (Record, pp. 47–51).

The prayer of the petition was denied.

The case was submitted in the trial court on an agreed statement of facts (Record, pp. 56–63), and a decree was rendered declaring the corporation dissolved and adjudging that its entire personal property had escheated to the United States of America (Record, pp. 79–81).

On appeal to this Court, the decree was modified, as to the personalty, and on the 25th day of May, 1891, this Court ordered and decreed as follows:

The decree entered in this case on the 19th of May, 1890, having been set aside by an order of the court made on the 23d day of May, 1890, it is now upon further consideration ordered, adjudged, and decreed that the decree of the Supreme Court of the Territory of Utah be affirmed with the following modification, that is to say, that the seventh clause of said decree be changed and modified so as to read as follows:

[7th. And the court does further adjudge and decree that the late corporation of the Church of Jesus Christ of Latter-day Saints having become by law dissolved as aforesaid, there did not exist at its dissolution, and do not now exist, any trusts or purposes within the objects and purposes for which said personal property was originally acquired, as hereinbefore set out, whether said acquisition was by purchase or donation, to or for which said personalty or any part thereof could be used, or to which it could be dedicated, that were and are not, in whole or in part, opposed to public policy, good morals, and contrary

to the laws of the United States; and, furthermore, that there do not exist any natural persons or any body, association, or corporation who are legally entitled to any portion of said personalty as successors in interest to said Church of Jesus Christ of Latter-day Saints, and the said personal property has devolved to the United States; and not being lawfully applicable to the purposes for which it was originally dedicated or acquired, and to which, at the commencement of this suit, it was being devoted by the said corporation and its controlling authorities, the same ought to be limited and appointed to such charitable uses, lawful in their character, as may most nearly correspond to those to which it was originally destined, to be ascertained and defined (unless in the meantime Congress should otherwise order) by reference to a master for due examination, inquiry and report thereon, subject to the approval of the court; and to be established, administered, and carried out in such manner and according to such scheme as may be suggested and reported by said master and approved by the court. It is further ordered and decreed that until the ascertainment and determination of such uses and the adoption of such scheme, and until direction be taken for the ultimate funding or investment of the said personal property for the purposes aforesaid, the receiver appointed in this cause do continue in the custody and charge thereof, with all accumulations, subject to the further order of the court, and (conjointly with the rents and income of the real estate) to the payment of the costs and expenses of this proceeding and of the receivership aforesaid. The reference herein provided for to be made by a separate order.]

Whereupon it is considered, adjudged, and decreed that the cause be remanded to the Supreme Court of the Territory of Utah, with directions to modify its decree as herein directed, and to take such further proceedings as to law and justice may appertain in conformity with the opinion of this court, delivered on this appeal at the last term of the court.

140 United States, 665–6.

In conformity with this decree, a Master was duly appointed by the Supreme Court of Utah to ascertain and define the charitable uses, lawful in their character, to which the property mentioned in said decree should be devoted, and to report a scheme therefor, subject to the approval of the Court (Record, p. 82). Two schemes were presented to the Master. One by the appellees, proposing to vest the personal property in the First Presidency of the Mormon Church, in trust, for the relief and assistance of its poor members needing pecuniary aid, and for the erection, repair, and maintenance of houses of worship for members of that Church, and limiting the use to these two purposes. The other scheme, proposed by the United States, would vest the property in a commissioner appointed by the Court, to be used by him for the benefit of the public schools of the Territory.

After taking the testimony and making due examination of the matter, the Master reported favorably on the scheme proposed by the United States (Record, pp. 83-89), to which the defendants filed exceptions and asked to have their scheme approved (Record, p. 192). The testimony was also reported to the Court (Record, pp. 90 to 185). After hearing the argument of counsel and being fully advised in the premises, the Court unanimously rejected the Master's scheme, and, on the 12th day of November, 1892, made and entered the following order and decree, to wit:

This cause having come on to be heard before this Court at a former day of this term upon exceptions to the Master's report filed herein on the 19th day of October, 1891, and the same having been argued by counsel for the respective parties and submitted to the Court, and the Court being now fully advised in the premises, it is hereby ordered, adjudged, and decreed that the scheme

for the disposition of the fund in controversy, reported and suggested to this Court for adoption by the Master in his said report, be, and the same is, disapproved and rejected.

And it is further ordered, adjudged, and decreed that said fund, and the whole thereof, be, and the same is hereby, vested in Leonard G. Hardy, in trust, to be by him invested to the best advantage, having in view the security of the fund as well as the income to be derived from the investment.

And to collect and receive the proceeds of all such investments and to apply such proceeds, or such portion thereof, and so much of the principal from time to time as may be necessary for that purpose, to the support and aid of the poor members of the Church of Jesus Christ of Latter-day Saints, and to the building and repairing of houses of worship for the members of said Church.

And it is further ordered, adjudged, and decreed that the said Leonard G. Hardy be required to give a bond to the Government of the United States in the sum of five hundred thousand ($500,000) dollars, to be approved by this Court or the chief justice thereof, and to be conditioned for the faithful performance of his duties as such trustee.

And it is further ordered, adjudged, and decreed that the said Leonard G. Hardy, as such trustee, be, and he is hereby, required to make a report to this Court on the first day of January of each year of his administration of said trust.

Record, pp. 198 and 199.

The United States have taken this appeal from said decree.

ARGUMENT.

THE APPEAL SHOULD BE DISMISSED BECAUSE THE DECREE OF THE SUPREME COURT OF UTAH CONFORMS TO THE MANDATE OF THIS COURT.

An appeal will not be entertained by this Court from a decree entered by an inferior court, in exact accordance with the mandate of this Court upon a previous appeal. Such decree, when entered, is in effect the decree of this Court and the appeal would be from the court to itself. When such an appeal is taken, however, the Court will, upon the application of the appellees, examine the decree entered, and if it conforms to the mandate, dismiss the case with costs.

Stewart *v.* Salamon, 97 U. S. 361.
Humphrey *v.* Baker, 103 U. S. 736.
Mackall *v.* Richards, 116 U. S. 45.

The only question for this Court to determine is? whether the decree of the Supreme Court of Utah is in conformity with the mandate of this Court. The appellees insist that it is. The original decree declared that upon the dissolution of the corporation the personal property of the Church had escheated to the United States. This Court modified that decree by deciding that it had not "escheated," but merely "devolved" to the United States. It declared that the property had been "dedicated to public and charitable uses," which were "stamped upon it by charter, by ordinance, by regulation, and by usage, in such an indelible manner that there can be no mistake as to their character, purpose, or object."

136 United States, 50.

Following the findings of fact of the lower court, this court decided that while the property of the Church "was held for the purpose of religious and charitable uses," it was intended to promote, inculcate, and spread the doctrines and usages of the Mormon Church, and that one of its distinguishing features was the practice of polygamy; that such practice was illegal and detrimental to the true interests of civil society, and that the Government should not sanction it by allowing the property to be used for the purpose of sustaining and defending an unlawful system, but that it should be "devoted to objects of undoubted charity and usefulness."

Ib. pages 48, 49, and 50.

The court then stated the law of charities applicable to this case as follows:

The principles of the law of charities are not confined to a particular people or nation, but prevail in all civilized countries pervaded by the spirit of christianity. They are found embedded in the civil law of Rome, in the laws of European nations, and especially in the laws of that nation from which our institutions are derived. The leading and prominent principle prevailing in them all is, that property devoted to a charitable and worthy object, promotive of the public good, shall be applied to the purposes of its dedication, and protected from spoliation and from diversion to other objects. Though devoted to a particular use, it is considered as given to the public, and is, therefore, taken under the guardianship of the laws. If it cannot be applied to the particular use for which it was intended, either because the objects to be subserved have failed, or because they have become unlawful and repugnant to the public policy of the State, it will be applied to some object of kindred character so as to fulfil in substance, if not in manner and form, the purpose of its consecration.

Ib. page 51.

It will be seen by an examination of the findings of fact and decree in the original case (Record, pp. 77–78, 81) that none of the objects or purposes of the charity are there stated. It only appears from the findings:

That prior to and at the time of the passage of said act (dissolving the corporation) the said personal property had been used for and devoted to the promulgation, spread, and maintenance of the doctrines, teachings, tenets, and practices of the said Church of Jesus Christ of Latter-day Saints, and the doctrine of polygamy, or plurality of wives, was one of said doctrines, teachings, tenets, and practices of the said late church corporation; but only a portion of the members of said corporation, not exceeding twenty per cent. of the marriageable members, male and female, were engaged in the actual practice of polygamy.

The learned counsel for the appellant, in his brief, treats this finding of fact as conclusive, not only upon the points originally involved in the case and decided by this Court, but also as to the question now before the Court. He claims that it is—

A distinct judicial ascertainment of the objects to which this fund was originally destined, as well as those to which it was applied before and since the disincorporation of the Church.

And he also asserts that—

It stands as an ascertained fact in this case (p. 78), that since the passage of the act of Congress of February 19, 1887, they (the Mormons) have promulgated, taught, spread, and upheld the same doctrines, tenets, and practices, including the doctrine of polygamy, as were formerly taught and upheld by the late corporation, and that these teachings have not been repudiated or dissented from, nor have they created any division in this sect.

This finding seems to be relied upon as controlling the question now before the Court. It was made in 1888 and declares that polygamy had been taught and the teaching had not then been repudiated or dissented from; but the report of the Master and the testimony taken before him show conclusively that such teachings have since been, and are now, repudiated by the Church, and dissented from by its members. And it is that testimony and report that are to govern the Court in its determination of the present issue. Were it not so, and if the former findings are conclusive, then the Court did a useless thing in referring the matter to a Master to take testimony. It cannot be that, after the evidence is taken by order of the Court, it must be disregarded and the case decided on the former findings. The original findings are conclusive as to the questions then before the Court and decided by it, but, so far as relates to the determination of the question now before the Court, they are superseded by the Master's report and the testimony taken before him.

It was the absence of proof as to the different objects of the charity that caused the Court to remand the case for examination by a Master. If the lawful objects of the charity had been known, the Court could have directed the application of the fund to such of them as were deemed most proper, but as they were unknown, it became necessary to send the case to a Master to devise a scheme for the application of the fund to such lawful uses as would most nearly correspond to those to which it was originally destined. The reason why the different objects of charity were not mentioned in the findings and decree is obvious from an examination of the agreed statement of facts (Record, pp. 56-63), which shows that there was no evidence at all before the Court on that point, except the findings above referred to, in relation to polygamy. And

it was this absence of proof and silence of the record, as to the objects and purposes of the charity, that rendered it necessary to send the case to a Master for examination. This is apparent from the language of the decree of this Court remanding the case, in which the receivership is continued, "until the ascertainment and determination of such uses and the adoption of such scheme."

The testimony taken before the Master shows that the fund in the hands of the receiver is the result of numerous contributions and donations made by members of the Mormon Church from time to time, extending over a period of many years; that these donations were made upon the understanding that the same were to be applied to the religious and charitable uses and purposes of the Church, by or under the direction of the President or head of the Church and his two counsellors; that they were so applied by said Church officials to the relief of poor and distressed members of the Church, and to the building of temples and other places of worship for members of the Church, and that such application was reported to and approved by the members of the Church—including the donors of the fund—semi-annually, in general conference assembled.

The court below in its opinion in this case says:

It appears from the evidence reported by the Master that George Q. Cannon testified: "That he was First Counsellor to Wilford Woodruff, President of the Church, and that he was familiar with the purposes for which contributions creating the fund were made for many years; that they were voluntarily made for religious and charitable purposes; that appropriation and distribution of it was left to the First Presidency, and the proceeds were expended on temples and places of worship and for the poor, and such charitable objects as arose; that the First Presidency in their appropriations of this fund were limited to

church purposes; that the custom has been for the First Presidency to submit to the semi-annual conference of the Church a report showing the appropriations and their purposes, and such reports were approved by that body." This testimony was corroborated by the testimony of other officers of the Church and there was no evidence contradicting it.

The Master, in his report, states that the "allegations that ever since the organization of the Church and down to the time when the fund was taken possession of by the receiver herein the fund has been managed, controlled, and disbursed by and under the direction of the First Presidency of the Church, and was devoted and applied solely to the religious and charitable uses in which the Church and the members thereof were interested; that much the larger part of the fund had, prior to March 3d, 1887, been devoted to the building of temples, meeting-houses and other places of worship for the members of the Church and for the relief of its poor and distressed members, their families, and to the widows and orphans of such members who were in needy and distressed circumstances, were in the main supported by the evidence adduced before him."

It also appears from the testimony that about $75,000 per annum had been appropriated out of this fund to assist the poor previous to the time it was placed in the hands of the receiver, and about $50,000 per annum to the erection and repair of places of worship, and that as much will be required in the future.

The money and personal property in the hands of the receiver and to be disposed of by the Court is about $400,000.

Record, pp. 202–3.

The Church of Jesus Christ of Latter-day Saints has existed since the dissolution of the corporation as a voluntary religious association. The appellees suggested, as a proper scheme for the application of this property, that it be vested in the President or head of the Church and his

counsellors, and their successors in office, in trust, to invest the same and apply the proceeds thereof to the relief and assistance of poor and distressed members of the Church and their families, and to the building and repairing of necessary places of worship for the members of the Church; and that said trustees be required to report to the Court annually an account of their administration of such trust; and the appellees asked the Master to adopt and report such a scheme.

The relief of the poor and the erection and maintenance of houses of worship are certainly charitable uses, lawful in their character. The statute of 43 Elizabeth, c. 4, mentions "relief for the aged, impotent, and poor people;" donations for the "repairs of churches;" and for "aid or ease of any poor inhabitant," as charitable objects; and in the case of Saltonstall *v.* Sanders *et al.* (11 Allen, 455), Mr. Justice Gray, in speaking of what constitutes a good charity, says: "The assistance of the poor is required, not only by the moral and religious duty of every citizen, but by a sound public policy and a regard for the interests of the whole community."

THE DECREE OF THE LOWER COURT APPLIES THE FUND TO IDENTICAL LAWFUL USES TO WHICH IT WAS ORIGINALLY DESTINED.

The disposition of the fund suggested by the appellees would devote it to two of the identical lawful uses for which it was contributed. This is according to the direction of this Court and the intention of the donors. But the Master, while finding in substance that the fund was devoted and applied by the Church solely to the religious uses of the Church, and much the larger part of it to places of worship for its members, and to the relief of its poor and distressed members and their families, and to widows and orphans of such members in needy and distressed circumstances, reached the conclusion "That all

the uses to which this property was being applied by the Church and its controlling authorities at and before the commencement of this suit rest under the condemnation" of the decree of this Court, and that it has "adjudicated that the property cannot go back to any of those uses."

As we have already shown, there was no evidence before the trial court as to the objects of the charity, and no finding on that point, except that it was "used for and devoted to the promulgation, spread, and maintenance of the doctrines, teachings, tenets, and practices of the Church of Jesus Christ of Latter-day Saints, and the doctrine of polygamy or plurality of wives was one of the said doctrines, teachings, tenets, and practices of the said Church." With this finding before the Court, and no other evidence before it as to the objects of the charity, it decreed that there were no "trusts or purposes, within the objects and purposes for which said personal property was originally acquired, that were and are not, in whole or in part, opposed to public policy, good morals, and contrary to the laws of the United States."

The court had no knowledge at that time that this property had been devoted to any lawful purpose whatever. No testimony had been taken on that point, and the court could not know that there were any lawful uses to which it had been applied. The court did not intend to say that if the property had been used for the relief of the poor, or for any other lawful purpose, it could not be restored to that use because the same would be illegal or "opposed to public policy" or to good morals. It merely intended to say that it could not be devoted to the maintenance of polygamy, but must be applied to some lawful purpose corresponding with the intention of the donors.

It is fair to presume that if the evidence then before the court had disclosed the facts proven before the Master—

that the property had been contributed for and devoted to the uses for which the appellees now ask to have it set apart, the same being lawful in their character, the court would not have then decreed that there were no lawful trusts to which the property could be devoted, but would have directed that it be applied to such of the uses as were lawful, while taking care that it should not be used for any illegal purpose.

If the Master's theory of the case be correct, he was required to take testimony and find out for what charitable uses the property had been contributed, and, after having ascertained that the relief of the poor and building houses of worship were two of those purposes, he was required to discard these identical lawful uses and find some other purposes for the application of the fund, no more lawful or meritorious in their character, but which would "most nearly correspond" to the identical lawful uses which he had ascertained and disregarded. Surely this Court will not sustain such a proposition, it approaches too nearly the *reductio ad absurdum*. The court could not know till the Master's report and the testimony came in that there were any lawful charitable uses to which the property had been and could be devoted, and when it found that there were such, it was the duty of the court to decree, as it did, in favor of the identical lawful uses intended by the donors, which it would have done in the first instance if the same evidence had been before it.

It cannot be imputed to this Court that it intended that if the property was devoted to such charitable purposes as the support of the poor, and others of like character, lawful and commendable in themselves, that these identical uses should be excluded from the benefits of this fund and it should be devoted to others that "most nearly correspond" to these lawful uses.

POLYGAMY HAVING BEEN PERMANENTLY ABANDONED, THERE IS NO OBJECTION TO THE FUND BEING APPLIED TO THE RELIGIOUS AND CHARITABLE PURPOSES OF THE CHURCH.

It is apparent from both the opinions of this Court in the case at bar that the only objection to the setting aside of the property to and in trust for the voluntary religious church association, generally and unconditionally, was the fact that polygamy was still upheld and practised by the members of that association, and the assumed fact that this property had been used for the spread and growth of that doctrine and would be likely to be so used while the same continued to be a tenet of the faith, if the Court imposed no restraint upon its use. The court below had not found, except inferentially, that the property had been used in whole or in part at any time to promulgate or spread that doctrine, and we claim that it was not so used in fact. But even if it was, the proof taken by the Master shows that the practice has been forbidden and is permanently and in good faith abandoned. In his report the Master finds: "That since the rendition of the decree in this cause, the practice of polygramy has been abandoned by the Church of Jesus Christ of Latter-day Saints, but that the principle is still retained by the Church as one of the tenets and cardinal points of its faith." So there would seem to be no longer either reason or excuse for withholding the property from the lawful uses to which it was originally destined.

Congress did not aim to suppress the Mormon religion. It aimed simply at the extirpation of the practice of polygamy, which was one of the tenets of that faith. It recognized that it was and would be lawful for this Church to build, repair, and maintain places of worship, when it expressly enacted that "No building or the grounds appurtenant thereto which is held and occupied exclusively for purposes of the worship of God, or parsonage con-

nected therewith, or burial ground, shall be forfeited" (*supra*). And this notwithstanding such property might have become forfeited under the act of 1862.

On the 25th day of September, 1890, Wilford Woodruff, President and head of the Church, issued an official manifesto in which he said:

We are not teaching polygamy or plural marriage, or permitting any person to enter upon its practice. Inasmuch as laws have been enacted by Congress forbidding plural marriages, which laws have been pronounced constitutional by the court of last resort, I hereby declare my intention to submit to those laws, and to use my influence with the members of the Church over which I preside to have them do likewise. * * * And I now publicly declare that my advice to the Latter-day Saints is to refrain from contracting any marriage forbidden by the law of the land" (Record, p. 191).

On the 6th of October, 1890, at a general conference of the Church, Lorenzo Snow, President of the Twelve Apostles, the second council in authority in the Church, after this manifesto had been read, made the following motion, which was unanimously carried:

I move that, recognizing Wilford Woodruff as the President of the Church of Jesus Christ of Latter-day Saints, and the only man on earth, at the present time, who holds the keys of the sealing ordinances, we consider him fully authorized, by virtue of his position, to issue the manifesto which has been read in our hearing, and which is dated September 25, 1890; and that as a Church in general conference assembled we accept this declaration concerning plural marriage as authoritative and, binding.

The Supreme Court of Utah epitomizes the testimony on this point as follows:

It appears from the evidence reported by the Master that Wilford Woodruff, the President of the Church, testified that his object in issuing the manifesto was "to announce to the world that plural marriage had been forbidden by the Church, and that it could not be practised thereafter; that it was presented to the quorum of the Twelve Apostles and accepted by them; that it was afterwards presented to the officers and members of the Church assembled at their sixtieth semi-annual conference on October 6, 1890; that the conference received and adopted it by a unanimous vote; that there were present about ten thousand officers and members; the representation was a fair one from the whole Territory and other places." The witness further testified in substance that he has never heard of any opposition to it or dissent from it by any member of the Church; that to the best of his knowledge the members of the Church willingly accepted and adopted it; that it would be contrary to the law of the Church for any member of it to enter into or contract a plural marriage; *that any person entering into plural marriage after that date would be liable to excommunication from the Church;* that there has not been any polygamous or plural marriage entered into or contracted by any member of the Church to his knowledge since the date of the manifesto; that he has not since that date assented to the practice of polygamy in any way or manner and that he does not know of any other officer of the Church that has; that he does not have any hope or expectation that the practice of polygamy will ever be re-established in the future; that all revelations that the Church has were accepted by a vote; that he believes in the principle of polygamy and presumes the members of the Church do; that a principle may be believed in as a true one and still not be practised; that a failure of any member to follow the manifesto would become a subject of Church discipline; that the intention of the manifesto was to require obedience to all the laws, including those prohibiting unlawful cohabitation; that he issued the manifesto by inspiration and that he believed it was his duty to do so; that the manifesto and the resolution is the law of the

Church—"the law of God to us; we are required to abandon that doctrine or tenet of our faith in our practices." He was asked:

Q. President Woodruff, do you believe that the principle of plural marriage was revealed to the Church through Joseph Smith from the Almighty? A. I do.

Q. Do you believe that the Almighty has revealed to the Church, through you, that it is discontinued and abandoned? A. I do.

Q. You believe that? A. Yes, sir."

Record, p. 214.

George Q. Cannon and Joseph F. Smith, counsellors to President Woodruff, and who, with him, constitute the First Presidency of the Church, and Lorenzo Snow and Anton H. Lund, two of the Twelve Apostles, corroborated the testimony of the President, and there is no evidence contradicting it or tending to prove that any of the Church authorities, or any of its members, since the date of the manifesto, have taught, advised, counselled, or consented to the practice of polygamy or unlawful cohabitation.

The uncontradicted evidence proves that the Church authorities and its members regard the manifesto and resolution of October 6th, 1890, as prohibiting the practice of polygamy, and that they regard this prohibition as the law of God to them. The Court below, after summing up the evidence and proving that the practice of polygamy had been abandoned, refers to the Mormon belief in the doctrine as being: "That within the pale of civilization where laws exist against it, the practice of polygamy is wrong, but that outside of this limit it might be rightfully practised" (Record, p. 215).

The Master, in his report, attaches importance to the statement of the President that he believes the principle of polygamy is right, but that it is wrong to practise it when the sentiment of the people and municipal law is

against it. The Court below answers this objection in the following clear and logical language:

The government is not authorized to deprive any person of his property against his will, except by forfeiture or escheat according to law, or by appropriating it to the payment of public taxes in the mode the law prescribes, or in pursuance of the law of eminent domain, with just compensation. It cannot divest any individual or any class of the people of their property, or deny to them the right to control it or to devote it to any object they may choose, simply because they may entertain wrong political or religious beliefs; the doing of either would be a plain violation of those principles of civil and religious liberty which underlie our whole political system. The intent and the resulting act may together be defined as crime and punished; but the intent alone cannot be. The perceptions, the feelings, the beliefs, or the consciences of mankind cannot be regulated by human laws. Such laws would transcend the power of all just governments.

We do not feel authorized to withhold from the Latter-day Saints the right to devote their property to charitable objects simply because we may think they have wrong beliefs; or to undertake the eradication of such beliefs by denying to them the right to the enjoyment of their property or the right to appropriate it to lawful purposes. Polygamy having been abandoned by the Church, the remaining purposes to which the personal property in question has been dedicated and to which it may be applied by the Church appear to be lawful. And in view of this the writer of this opinion is unable to understand upon what principle of law this court can deny to this Church the right to appropriate and apply this fund to such purposes. He is of the opinion that it should be vested in Wilford Woodruff, George Q. Cannon, and Joseph F. Smith, its First Presidency, and in their successors in office, the agents selected by the Church, to be devoted and applied by them to those purposes according to the will of the Church and the wishes of its donors.

It is conceded by the appellant that "under our system of government the liberty of conscience is without restraint and it is allowed to all men to indulge in such speculative beliefs and adopt such systems of philosophy and theology as they may prefer, without molestation or rebuke from the civil power," and that "the government may not repress or in anywise interfere with the beliefs which any may entertain, however obnoxious such beliefs may be to decency, good order, and good government." And yet the court is asked to confiscate this fund by diverting it from the lawful charities of the Church and applying it to a purpose entirely foreign to that intended by the donors, with the general public as beneficiaries, solely because of the religious belief of certain members of the Church. Rather a novel method of preserving the "liberty of conscience" and freedom of belief.

While admitting the discontinuance of the practice of polygamy, objection is made to having the fund applied to the charitable purposes expressed in the decree, because only members of the Church would be beneficiaries, and appellant claims that "it is proposed to apply this fund to enlarging the facilities and increasing the means for propagating doctrines, the necessary and logical fruits of which this Government has in the most solemn form reprobated and condemned." It is difficult to see how this conclusion can be reached from the evidence. The Church has expressly condemned any teaching "which can be reasonably construed to inculcate or encourage polygamy" (Record, p. 191). The testimony all shows, without contradiction, that polygamy has been forbidden by the Church and abandoned by the Mormon people; that persons entering into it would be subject to excommunication, and that whatever belief a member of the Church may entertain concerning it is simply an abstract

individual opinion. The Court will hardly confiscate this fund on such an "attenuated pretext," even though the belief be "a delusion."

It is suggested that the fund should be applied through the public schools to the "formation and development of a public sentiment inimical to the doctrine of polygamy," and the case of Jackson *v.* Phillips (14 Allen, 539), is cited as authority for that proposition, but we think it utterly fails to sustain it. In that case the court ordered the fund to be used in "promoting the education of freedmen," because the testator had directed that it be used to "create a public sentiment that will put an end to negro slavery in this country." So the application of that fund was in exact accordance with the intention of the donor, but it will hardly be seriously contended that the application of this fund to the formation of a public sentiment "inimical to the doctrine of polygamy" would be in harmony with the intention of its donors.

In this connection we will say that it has never been claimed by the appellees, as assumed in the appellant's brief, that the contributors of this fund did *not* intend that any portion of it should be applied to educational purposes, or that "the funds held by the Church had been dedicated exclusively to the erection and repair of their houses of worship, and the care of the poor members of the Church." The record is not definite as to whether any part of the fund might have been devoted to education, but it is certain that the contributors never intended that any portion of the fund should be applied to the public schools. They gave the property to the Church for the benefit of its members and not for the use of the public. The purposes mentioned in the decree are known to be some of the identical uses intended by the donors, and so it should be sustained.

But, if polygamy were still a doctrine of the Church, and its practice still countenanced and encouraged, and it further appeared that this fund had been devoted to the charitable and religious uses and purposes of the Church, and that it had been originally designed by the donors that the fund might be applied to the spread of that doctrine, or to some other and lawful charitable and religious use of the Church, it would not be permissible for the court to apply it to an entirely different charitable use from that originally designed. But the court should, in such case, so limit the application of the fund as to confine its appropriation to the lawful uses for which it had been contributed.

When the dedication is broad enough to allow the trustee to apply the fund to unlawful as well as lawful purposes, the court will limit its application to the lawful ones. When the terms of the gift authorize the trustees to devote the fund to either of two objects, one legal and the other illegal, its application will be confined to the legal purpose and the illegal one will be rejected.

The principle of these cases seems to be the same, that although a valid charitable use should happen to be joined by way of alternative with one which is invalid, no matter how, the manner being altogether indifferent, the former will not be prejudiced by its connection with the latter.

Boyle on Charities, 232.

In the case of Jackson *v.* Phillips, *supra*, which is a most interesting and instructive case on the doctrine of *cy-pres* as administered and applied in equity, the Court, through Mr. Justice Gray, says:

When a charitable intent appears on the face of the will, but the terms used are broad enough to allow of the fund being applied either in a lawful or an unlawful manner,

the gift will be supported, and its application restrained within the bounds of the law.

14 Allen, 556.

THE FORMER DECREE OF THIS COURT DID NOT CONCLUDE THE MASTER, OR THE LOWER COURT, FROM APPLYING THE FUND TO SOME OF THE IDENTICAL LAWFUL USES FOR WHICH IT WAS CONTRIBUTED.

It was contended in the court below, and may be urged here, that the Master was concluded by the decree of this Court from adopting the scheme proposed by the appellees, and that the property or fund could not be applied to the uses and purposes suggested by them. In support of this objection reference was made to the decision of the court on the intervention of George Romney, Henry Dinwoodey, James Watson, and John Clark on behalf of the members of the Church. It was claimed that the decree was decisive of this question and that the property could not be applied to any of the charitable uses of the Church, however lawful and praiseworthy they might be. This petition of intervention and the decree show that there is absolutely no ground for such claim. The issues are not the same, and if they were, the difference in time between the presentation of the intervenors' petition and the appellees' scheme would prevent the one from barring the other, as clearly appears from the decision of this Court.

The intervenors alleged in their petition that they and the other members of the Church on whose behalf their petition was filed were "equitably the owners of the property and beneficially interested therein," and they asked the court to decree "that the said property belongs to the individual members of said Church," etc. The appellees did not claim in their scheme to be the owners of the property, either equitably or otherwise, nor did they claim ownership for the other members of the Church, they simply asked that it be treated as a trust fund for

the benefit of the poor and distressed members of the Church, and for the building and repair of necessary places of worship for members of the Church, and that the First Presidency be appointed trustees to manage the same and report to the court.

The difference between the claim of the intervenors and the scheme of the appellees is clearly apparent. One claims the absolute and unrestricted ownership of the property, and the other only asks to have it applied to some of the lawful charitable uses for which it was contributed, in conformity with the decision of this Court.

Besides the difference in the issues, there is another reason why the Romney petition does not bar the appellees' scheme. The former was made at a time when action upon it could not be a bar to the present application. This Court clearly recognizes that fact in the following paragraph of its opinion:

> The application of Romney and others, representing the unincorporated members of the Church of Jesus Christ of Latter-day Saints, is fully disposed of by the considerations already adduced. The principal question discussed has been whether the property of the Church was in such a condition as to authorize the Government and the court to take possession of it and hold it until it shall be seen what final disposition of it should be made; and we think it was in such a condition, and that it is properly held in the custody of the receiver. The rights of the Church members will necessarily be taken into consideration in the final disposition of the case. There is no ground for granting their present application. The property is in the custody of the law, awaiting the judgment of the court as to its final disposition in view of the illegal uses to which it is subject in the hands of the Church of Latter-day Saints, whether incorporated or unincorporated. The conditions for claiming possession

of it by the members of the sect or community under the act do not at present exist.

136 United States, 66.

This language clearly negatives the idea that the denial of the former petition was a bar to adopting the scheme approved by the lower court, and expressly declares that "the rights of the Church members will necessarily be taken into consideration in the final disposition of the case." If that be true, when and where will such consideration take place? It cannot be denied that this is the last and only opportunity the members of the Church will ever have to assert their rights, which this Court says must be considered.

In speaking of the character of the original suit and the disposition to be made of the property, this Court says:

It is not our province to pass judgment upon the necessity or expediency of the act under which this proceeding was taken. The only question we have to consider in this regard is as to the constitutional power of Congress to pass it. Nor are we now called upon to declare what disposition ought to be made of the property of the Church of Jesus Christ of Latter-day Saints. This suit is in some respects an ancillary one, instituted for the purpose of taking possession of and holding for final disposition the property of the defunct corporation in the hands of the receiver, and winding up its affairs. To that extent and to that only the decree of the circuit court has gone.

Ib. page 64.

The present decree of the lower court is in perfect harmony with the mandate of this Court, and it disposes of the property in such a way as to carry out the intention of the donors and respect the rights of the beneficiaries.

THE SCHEME PROPOSED BY THE UNITED STATES IS NOT IN HARMONY WITH THE MANDATE OF THIS COURT. IT WOULD APPLY THE FUND TO AN ENTIRELY DIFFERENT AND FOREIGN PURPOSE FROM THAT INTENDED BY THE DONORS.

The scheme proposed by the United States, approved by the Master and rejected by the court, would apply the Church fund "to the use and for the benefit of the public schools of the Territory of Utah." This would not be executing the intention of the donors, but would be applying the fund to a charitable use entirely foreign to that for which it was contributed. The donors of this fund were members of the Church of Jesus Christ of Latter-day Saints, and the fund was contributed for, and devoted to, the religious and charitable uses of that Church, including the relief of its poor members and the building and repair of houses of worship. It was never intended by the donors that the general public, nor indeed any but members of the Church, should enjoy the benefits of these contributions. To adopt the scheme of the Master would be to divert the fund from the identical and lawful uses for which it was contributed, and devote it to a purpose quite different from that intended by the donors. It would be giving the benefit of the fund to persons who had not contributed to it and who do not even belong to the same class or sect for whose benefit the fund was created. The public schools are not exclusively for Mormon children; they are free schools, sustained by taxation and open to all classes. Such a scheme is not only devoid of every element of equity, but is grossly unjust and in direct conflict with the opinion of this Court in this case, where it is said that "if the fund cannot be applied to the particular use for which it was intended, either because the objects to be subserved have failed or because they have become unlawful and repugnant to the public policy of the State, it will be applied to some object of kindred character so as to fulfil in substance, if not in manner and form, the purpose of its consecration."

The doctrine of *cy-pres*, as thus defined by this Court, requires that this fund should be applied to some lawful charitable use for the sole benefit of the members of the Mormon Church. It is not enough to say that it shall be devoted to some charitable use; it must be a use corresponding to the intention of the donors. No one can deny that the uses mentioned in the present decree are not only legitimate and praiseworthy, but that they are in strict accord with the intention and wishes of the donors. But it is urged that this fund should go to the public schools because more school-houses are needed in Utah. What an argument! The number and quality of school-houses in that Territory will compare favorably with those of any other community of like size and age in this country. But there is probably no section of the Union where more or better school-houses are not needed. Would that fact justify the confiscation of church property belonging to any religious denomination to supply the want? Hardly. The Mormons pay their school taxes like other people, and no principle of law or equity will justify the taking of their Church property, without just compensation, for the building of school-houses, or for any other public purpose.

It is claimed that the scheme adopted by the lower court is "inadequate to secure the application of the fund to the uses to which it is limited in the decree," and the question is asked: "When, by death, resignation, or removal, the functions of this trustee have ended, who will there be in this world to guard and exact the further faithful execution of the trust?" We answer that the court of equity which appointed this trustee will be there to appoint his successor and to see that the fund is administered according to the decree. For that purpose the court will retain the case and preserve its jurisdiction. This is contemplated by the decree itself, which requires

the trustee to report to the court on the first day of January of each year his action as such trustee.

So we say that the scheme of the court is entirely adequate to secure the proper application of the fund to the lawful uses to which it was originally destined, while the Government scheme for diverting the fund from the charitable uses of the members of the Church and applying it to a public charity, the support of common schools, with the whole community as beneficiaries, would be an act of spoliation unworthy of a court of equity, and in excess of its legitimate power. Even the sovereign as *parens patriæ* would not be justified in such an arbitrary disposition of the fund.

THE DOCTRINE OF *CY-PRES* AS DEFINED BY THIS COURT REQUIRES THAT THE FUND SHALL BE DEVOTED TO SUCH LAWFUL CHARITABLE USES AS WILL BEST CARRY OUT THE INTENTION OF THE DONORS.

In its opinion in this case, the Court says:

> Where a charitable corporation is dissolved, and no private donor, or founder, appears to be entitled to its real estate (its personal property not being subject to such reclamation), the government, or sovereign authority, as the chief and common guardian of the state, either through its judicial tribunals or otherwise, necessarily has the disposition of the funds of such corporation, to be exercised, however, with due regard to the objects and purposes of the charitable uses to which the property was originally devoted, so far as they are lawful and not repugnant to public policy.
>
> 136 United States, 48.

The manner in which the due administration and application of charitable estates is secured depends upon the judicial institutions and machinery of the particular government to which they are subject. In England the Court of Chancery is the ordinary tribunal to which this class of cases is delegated, and there are comparatively few

which it is not competent to administer. Where there is a failure of trustees, it can appoint new ones; and where a modification of uses is necessary in order to avoid a violation of the laws, it has the power to make the change. There are some cases, however which are beyond its jurisdiction, as where by statute a gift to certain uses is declared void, and the property goes to the king, and in some other cases a failure of the charity. In such cases the king, as *parens patriæ* under his sign manual, disposes of the fund to such uses, analogous to those intended, as seems to him expedient and wise.

Ib. page 51.

After having cited many cases, this Court says:

These authorities are cited (and many more might be adduced) for the purpose of showing that where property has been devoted to a public or charitable use, which cannot be carried out on account of some illegality in, or failure of the object, it does not, according to the general law of charities, revert to the donor or his heirs or other representatives, but is applied under the direction of the courts, or of the supreme power in the State, to other charitable objects lawful in their character, but corresponding as near as may be to the original intention of the donor. They also show that the authority thus exercised arises in part from the ordinary power of the Court of Chancery over trusts, and in part from the right of the government or sovereign, as *parens patriæ*, to supervise the acts of public and charitable institutions in the interests of those to be benefited by their establishment.

Ib. page 56.

After further discussion of the doctrine, this Court says:

The true ground (why property devoted to charity generally does not revert to the donor or his heirs) is that the property given to a charity becomes in a measure public property, only applicable as far as may be, it is true, to the specific purposes to which it is devoted, but

within those limits consecrated to the public use, and becomes part of the public resources for promoting the happiness and well-being of the people of the State. Hence, when such property ceases to have any other owner by the failure of the trustees, by forfeiture for illegal application, or for any other cause, the ownership naturally and necessarily falls upon the sovereign power of the State; and thereupon the Court of Chancery, in the exercise of its ordinary jurisdiction, will appoint a new trustee to take the place of the trustees that have failed or that have been set aside, and will give directions for the further management and administration of the property; or, if the case is beyond the ordinary jurisdiction of the court, the legislature may interpose and make such disposition of the matter as will accord with the purposes of justice and right. The funds are not lost to the public as charity funds. They are not lost to the general objects or class of objects which they were intended to subserve or effect. The State, by its legislature or its judiciary, interposes to preserve them from dissipation and destruction, and to set them up on a new basis of usefulness, directed to lawful ends coincident, as far as may be, with the objects originally proposed.

Ib. page 59.

The foregoing is the doctrine of *cy-pres* as declared by this Court in this case. Further definitions and illustrations of the principles involved appear in the following citations.

In 2 Story's Equity Jurisprudence, sec. 1176, it is said:

The doctrine of *cy-pres* as applied to charities was formerly pushed to a most extravagant length, but this sensible distinction now prevails, that the court will not decree the execution of the trust of a charity in a manner different from that intended, except so far as it is seen that the intention cannot be literally executed. In that case another mode will be adopted consistent with the general intention, so as to execute it, although not in mode, yet in

substance. If the mode should become by subsequent circumstances impossible, the general object is not to be defeated if it can in any other way be obtained. Where there are no objects remaining to take the benefit of a charitable corporation, the court will dispose of its revenue by a new scheme upon the principle of the original charities, *cy-pres*.

In the City of Philadelphia *v.* Girard's Heirs (45 Penn. St. 28), Lowrie, J., after pointing out that the doctrine of *cy-pres*, which was at one time carried to such an extravagant extent in England as to be grossly revolting to the public sense of justice, and by which an unlawful or entirely indefinite charity was transferred by the Crown into one that was lawful and definite, though not at all intended by the donor or testator, says:

The meaning of the doctrine of *cy-pres*, as received by us, is, that when a definite function or duty is to be performed, and it cannot be done in exact conformity with the scheme of the person or persons who have provided for it, it must be performed with as close approximation to that scheme as reasonably practicable; and so, of course, it must be enforced. It is the doctrine of approximation.

In Moore's heirs *v.* Moore's devisees, 29 Am. Dec. 428, (4th Dana), the Court, through Chief Justice Robertson, says:

The *cy-pres* doctrine of England is not, or should not be, a judicial doctrine, except in one kind of case; and that is, where there is an available charity to an identified or ascertainable object, and a particular mode, inadequate, illegal, or inappropriate, or which happens to fail, has been prescribed. In such case, a court of equity may substitute or sanction any other mode that may be lawful and suitable, and will effectuate the declared intention of the donor, and not arbitrarily and in the dark, presuming on his motives or wishes, declare an object for him.

In Jackson *v.* Phillips (14 Allen, 591) the court says:

The intention of the testator is the guide, or, in the phrase of Lord Coke, "the lodestone of the court;" and therefore, whenever a charitable gift can be administered according to his express directions, this court, like the Court of Chancery in England, is not at liberty to modify it upon considerations of policy or convenience. * * * But there are cases where the charitable trust could not be executed as directed in the will, in which the testator's scheme has been varied by this court in such a way and to such an extent as could not be done in the case of a private trust. Thus, bequests to a particular Bible society by name, whether a corporation established by law or a voluntary association, which had ceased to exist before the testator's death, have been sustained and applied to the distribution of Bibles through a trustee appointed by the court for the purpose.

In Heuser *et al. v.* Harris *Ex'r.* (42 Ill. 436), speaking of the doctrine of *cy-pres*, it is said that the court might act as the donor would have done if he had foreseen the impossibility of executing the scheme in the manner designated by him. "An approximation to the intention of the testator, as near as possible, is all that is meant by this doctrine."

See Attorney-General *v.* The Ironmongers' Company, 2 Mylne & Keen, 576, 588–9.

Attorney-General *v.* same, 2 Beavan, 313, 325.

Attorney-General *v.* same, 1 Craig & Phillips, 208, 220 to 224.

Attorney-General *v.* Lawes, 8 Hare, 32.

Attorney-General *v.* Whitchurch, 3 Vesey, Jr. 141.

As showing with what hesitation the courts depart from the scheme pointed out by the donor.

See 1st Lewin on Trusts, 536.

Boyle on Charities, 162, 165.
Attorney-General *v.* Dixie, 2 Mylne & Keen, 342.
Attorney-General *v.* Earl of Mansfield, 2 Russ. 501.

IF THE POWER EXISTS IN THIS COUNTRY TO MAKE THE APPLICATION OF THE FUND CONTENDED FOR BY THE UNITED STATES IT CAN ONLY BE DONE BY CONGRESS AND NOT BY THE COURTS.

The application of the doctrine of *cy-pres* by a court of equity acting judicially—that is to say, by virtue of the power inherent in the courts of chancery—is to be distinguished from the exercise of the royal prerogative by the chancellor of England under the sign manual. This exercise of prerogative right is extra-judicial and beyond the jurisdiction of any court in this country. By it the king, as *parens patriæ*, might in person or through his chancellor, acting under the sign manual, determine to what charitable uses property should be applied when the same had been by the testator or donor devoted to charity, generally, without designating in any manner the objects of the charity, and without the appointment of trustees to administer the same; or when the property had been by the donor devoted to some charity which was illegal or opposed to the public policy of the kingdom, direct that the fund be applied to some legal, though entirely foreign, use or charity. This was the result of the doctrine of *cy-pres* as extra-judicially administered at an early day in England. It was in view of this distinction between the judicial power of a court of equity and the extra-judicial power of the sovereign that this Court in its opinion in this case says:

It is obvious that any property of the corporation which may be adjudged to be forfeited and escheated will be subject to a more absolute control and disposition by the Government than that which is not so forfeited. The *non-forfeited property will be subject to such disposition only as*

may be required by the law of charitable uses, whilst the forfeited and escheated property, being subject to a more absolute control of the Government, will admit of a greater latitude of discretion in regard to its disposition.

136 United States, 64.

In Jackson *v.* Phillip (14 Allen, 574) the Court says:

The principal, if not the only cases in which the disposition of a charity is held to be in the Crown by sign manual are of two classes, the first, of bequests to particular uses, charitable in their nature, but illegal, as for a form of religion not tolerated by law; and the second, of gifts of property to charity generally, without any trust interposed, and in which either no appointment is provided for, or the power of appointment is delegated to persons who die without exercising it. * * *

It is by the sign manual, and in cases of the first class, that the arbitrary dispositions have been made which were so justly condemned by Lord Thurlow in Moggridge *v.* Thackwell (1 Vesey, Jr., 469), and Sir William Grant in Carey *v.* Abbot (7 Vesey, 494), and which, through want of due discrimination, have brought so much discredit upon the whole doctrine of *cy-pres*. * * *

This power of disposal by the sign manual of the Crown, in direct opposition to the declared intention of the testator, whether it is to be deemed to have belonged to the king as head of the church, as well as the state, "intrusted and empowered to see that nothing be done to the dishersion of the Crown or the propagation of a false religion," * * * or to have been derived from the power exercised by the Roman emperor, who was sovereign legislator as well as supreme interpreter of the laws, * * * is clearly a prerogative and not a judicial power, and could not be exercised by this Court, and it is difficult to see how it could be held to exist at all in a republic, in which charitable bequests have never been forfeited to the use or submitted to the disposition of the Government, because superstitious or illegal.

The learned judge then cites, in illustration of the exercise of this arbitrary power, the case of Da Costa *v.* De Pas (1 Ambler, 228), in which a gift for establishing a Jesuba or assembly for reading the Jewish law and instruction in that religion, was applied to the support of a Christian chapel at a foundling hospital. Story also refers to this case, and follows the statement of the result reached by a note of exclamation.

2 Story's Equity Jurisprudence, secs. 1168, 1182.

It is the doctrine of *cy-pres*, as exercised by the chancellor under the sign manual, that Chief-Justice Gibson, in Methodist Church *v.* Remington, (1 Watts, 227), characterizes as being "too grossly revolting to the public sense of justice to be tolerated in a country where there is no ecclesiastical establishment."

In Minot *v.* Baker (147 Mass. 351), Holmes, J., says:

It is to be observed that the objections to the exercise of the power to frame a scheme in the case supposed (speaking of the case then before the court) are not at all similar to those which apply to a diversion by the sign manual to wholly different uses of property devoted to a specific purpose which fails because contrary to the policy of the law. For instance, as in the well-known case of Da Costa *v.* De Pas, where a legacy to establish a Jesuba, or assembly for reading the law and instructing people in the Jewish religion, was devoted to the Foundling Hospital for the instruction of the children in the Christian religion. In such a case there is no pretence, or only a pretence, of carrying out the directions of the testator His will is arbitrarily overridden.

In Curling's Administrators *v.* Curling's Heirs, 33 Am. Dec. 477–8 (8 Dana), the court, through Chief-Justice Robertson says:

So far as the chancellor of England has applied an indefinite charity to a specific object, in a class of objects not designated by the donor, or has applied the donor's bounty to a purpose different from that to which it was dedicated by himself, we should be unwilling to follow the example. The *cy-pres* doctrine of the civil law, as applied by the chancellor of England to charities, is not, to its full extent a judicial doctrine, and, so far as it is extra-judicial, it cannot be recognized by courts of equity here. * * *

If property be devised to education, it could not, in our opinion, be judicially diverted to religion, or the relief of the poor or the sick, or to general charity, or to any other object than that designated by the testator. Nor, if he shall have dedicated it to a designated college, could a court of equity authorize or sanction the application of it to an essentially different institution; because, by doing so, the court might apply the charity to a specific object to which the testator did not intend that it should be applied, and to which he never would have devised it.

In note 1 to Section 508, 4 Kent's Commentaries (13th edition), it is said:

It is important to distinguish the powers exercised by English chancellors under the sign manual of the Crown, from those which are part of the general jurisdiction of equity, and to which the doctrine of *cy-pres* in its true sense applies. The former powers are prerogative, and include that of applying a charity, which has failed by reason of illegality, to objects quite *diversi generis* from those intended by the donor, and that of appointing a specific object in case of a gift to charity generally. Of these, the one probably does not exist in this country, and the other, if anywhere, is in the legislature, as succeeding to the powers of the king as *parens patriæ*.

See 3 Am. & Eng. Encyc. of Law, pages 133–4.

In Clephane *v.* The Lord Provost of Edinburgh, Law Reports (1 Scotch and Divorce Appeals, 421), it is said by Lord Westbury:

It is true you cannot substitute one charity for another. You may substitute for a particular charity which has been defined and which has failed, another charity, *ejusdem generis*, or which approaches it in its nature and character; but you cannot take a charity which was intended for one purpose and apply it to a purpose altogether different. Some such instances occur in our English reports upon the subject, but on examination it will be found that what was done in those cases was not done under the ordinary authority of the court of equity, but was done in cases where the charity had failed by reason of illegality, and where it consequently devolved upon the Crown to declare what should be the form of administration to be adopted.

When this Court remanded the case to the Supreme Court of Utah to have a Master devise a scheme for the application of the fund to some lawful charitable use corresponding to the intention of the donors, it expected the Court and Master to be guided by the recognized principles of *cy-pres*, and to keep within the limits of the power and jurisdiction vested in a court of equity. It certainly did not intend to have the Court or Master attempt to exercise that extra-judicial power or prerogative which is sometimes exercised by the Chancellor of England under the sign manual, and which can only be exercised in this country by the sovereign or legislative power. To apply the fund to the public schools would be an exercise of the latter power, for it would be diverting the fund from lawful charitable purposes for which it was intended, and applying it to altogether new and different purposes from those to which it was originally destined.

We say, then, that it was beyond the power of the Court below to adopt the Master's scheme and take this fund, which was intended for the charitable uses of the members of the Mormon Church, including the relief of its poor and the building and repair of houses of worship,

and apply it to the public schools, which would be an entirely different purpose and for the benefit of different beneficiaries.

IT SEEMS FROM THE DECISION OF THIS COURT TO BE AN OPEN QUESTION WHETHER CONGRESS EVEN COULD DIVERT THE FUND FROM THE LAWFUL USES TO WHICH IT WAS DEDICATED AND APPLY IT TO THE BENEFIT OF THE PUBLIC SCHOOLS.

If such a diversion of the fund as that proposed by the Government can be made at all, it is very clear that it cannot be done by the courts, but must be made by Congress, and this Court seems to leave it an open question whether Congress itself would have such power. The Court says:

As to the constitutional question, we see nothing in the act which, in our judgment, transcends the power of Congress over the subject. We have already considered the question of its power to repeal the charter of the corporation. It certainly also had power to direct proceedings to be instituted for the forfeiture and escheat of the real estate of the corporation; and if a judgment should be rendered in favor of the Government in these proceedings, the power to dispose of the proceeds of the lands thus forfeited and escheated, for the use and benefit of common schools of the Territory, is beyond dispute. It would *probably* have power to make such a disposition of the proceeds if the question were merely one of charitable uses and not of forfeiture.

136 United States, 65.

While this Court hesitates to say that Congress even has the power to make such an arbitrary disposition of the fund as is contended for by the Government, it is insisted that a court of equity, in the application of the doctrine of *cy-pres*, which is designed "to carry out, as nearly as may be, the true intention of the donors," may confiscate this fund and apply it to a use entirely foreign to that for which it was intended. In the appellant's brief the fund is referred to as having "been rescued

from the Mormon sect." It is true the fund was "rescued," or rather *wrested* from its rightful owners and has been withheld from them, and from the charitable purposes to which it was dedicated, for five long years, and to now restore it to those uses would be performing an act of simple but tardy justice, by placing the fund where it rightfully belongs and where it would, in the language of this Court, be "devoted to objects of undoubted charity and usefulness." If this property was seized for the purpose of coercing the Mormons into obedience to the law, as is generally supposed, then their abandonment of polygamy should have been followed by a prompt restoration of that which justly belongs to them, and which the Government has now no more right to retain or appropriate to a public use than it has to arbitrarily seize and use the property of any other law-abiding association or individual. By this decree the Government does not make any "gratuitous" gift to the Mormons; it only restores to them, in part, that which is their own, and what is guaranteed to them by the great charter of our liberties, and by every principle of law and equity.

NO SOVEREIGN AUTHORITY IN A FREE COUNTRY WOULD EXERCISE SUCH ARBITRARY AND OPPRESSIVE POWER AS IS INVOKED BY THE GOVERNMENT FOR THE DIVERSION OF THIS FUND.

But if Congress has the power to divert this fund from the lawful charitable uses for which it was contributed, to other and entirely different uses, it would not exercise that power. Such arbitrary and oppressive legislation could not be enacted in a free country. It is admitted that the action of the Government has already been an "extraordinary and unprecedented exercise of power" that could only be justified in the suppression of unlawful practices. Counsel says in his brief that "only acts which threatened corruption to the morals and destruction to the civilization of the country could justify this forceful interposition of

governmental power, *this privation of chartered rights—this seizure, sequestration, and actual confiscation of private property.*" That being so, and there being no longer any overt acts, the people against whom this legislation was directed having yielded obedience to the law, and conceded all that was ever demanded of them, why is the Government still denying them the common rights of freemen, and insisting that this Court shall do what no court of chancery in this country or in England has ever done while exercising mere judicial power—wrest a charitable fund from the lawful uses and beneficiaries for which it was contributed, and apply it to a use entirely foreign from that intended by its donors, and to different beneficiaries? Would it not be more magnanimous—nay, more just—for this great Government to recognize the changed conditions and admit the justice of our claim, even though to do so might "be a confession of folly on the part of the Government, if not, indeed, a self-conviction of crime"? Well might the appellees have asked to have this fund restored to the Church, unconditionally and without restriction, for its religious and charitable uses. The learned chief justice who wrote the opinion of the lower court says they were entitled to such a decree. But being desirous of demonstrating their good faith, they suggested a scheme that would leave the fund under the supervision of the court and subject to the restrictions now in the decree. Surely they have been modest in their request, and the court will not deny them this small measure of justice. The honor of this country, no less than the justice of our cause, requires that this appeal should be dismissed, or the decree of the lower court affirmed.

FRANKLIN S. RICHARDS,
For Appellees.

Supreme Court of the United States.

OCTOBER TERM, 1893.

THE UNITED STATES OF AMERICA,
APPELLANT,

v.

THE LATE CORPORATION OF THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS ET AL.,
APPELLEES.

No. 887.

Appeal from the Supreme Court of Utah Territory.

MOTION FOR DECREE.

FRANKLIN S. RICHARDS,
For Appellees.

WASHINGTON, D. C.:
GIBSON BROS., PRINTERS AND BOOKBINDERS.
1893.

Supreme Court of the United States.

OCTOBER TERM, 1893.

THE UNITED STATES OF AMERICA, Appellant,

vs.

THE LATE CORPORATION OF THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS *et al.*, Appellees.

No. 887.

Appeal from the Supreme Court of Utah Territory.

MOTION FOR DECREE.

The appellees, by their solicitor, come and show to the Court that on the 25th day of May, 1891, in the above-entitled cause, this Court decreed as follows, to wit:

The decree entered in this case on the 19th of May, 1890, having been set aside by an order of the court made on the 23d day of May, 1890, it is now upon further consideration ordered, adjudged, and decreed that the decree of the Supreme Court of the Territory of Utah be affirmed with the following modification, that is to say, that the seventh clause of said decree be changed and modified so as to read as follows:

[7th. And the court does further adjudge and decree that the late corporation of the Church of Jesus Christ of Latter-day Saints having become by law dissolved as afore-

said, there did not exist at its dissolution, and do not now exist, any trusts or purposes within the objects and purposes for which said personal property was originally acquired, as hereinbefore set out, whether said acquisition was by purchase or donation, to or for which said personalty or any part thereof could be used, or to which it could be dedicated, that were and are not, in whole or in part, opposed to public policy, good morals, and contrary to the laws of the United States; and, furthermore, that there do not exist any natural persons or any body, association, or corporation who are legally entitled to any portion of said personalty as successors in interest to said Church of Jesus Christ of Latter-day Saints, and the said personal property has devolved to the United States; and not being lawfully applicable to the purposes for which it was originally dedicated or acquired, and to which, at the commencement of this suit, it was being devoted by the said corporation and its controlling authorities, the same ought to be limited and appointed to such charitable uses, lawful in their character, as may most nearly correspond to those to which it was originally destined, to be ascertained and defined (unless in the meantime Congress should otherwise order) by reference to a master for due examination, inquiry and report thereon, subject to the approval of the court; and to be established, administered, and carried out in such manner and according to such scheme as may be suggested and reported by said master and approved by the court. It is further ordered and decreed that until the ascertainment and determination of such uses and the adoption of such scheme, and until direction be taken for the ultimate funding or investment of the said personal property for the purposes aforesaid, the receiver appointed in this cause do continue in the custody and charge thereof, with all accumulations, subject to the further order of the court, and (conjointly with the rents and income of the real estate) to the payment of the costs and expenses of this proceeding and of the receivership aforesaid. The reference herein provided for to be made by a separate order.]

Whereupon it is considered, adjudged, and decreed that

the cause be remanded to the Supreme Court of the Territory of Utah, with directions to modify its decree as herein directed, and to take such further proceedings as to law and justice may appertain in conformity with the opinion of this court, delivered on this appeal at the last term of the court.

140 United States, 665–6.

That in pursuance of said decree and the mandate of this Court, on the 12th day of November, 1892, the Supreme Court of Utah Territory made and entered the following order or decree, to wit:

This cause having come on to be heard before this Court at a former day of this term upon exceptions to the Master's report filed herein on the 19th day of October, 1891, and the same having been argued by counsel for the respective parties and submitted to the Court, and the Court being now fully advised in the premises, it is hereby ordered, adjudged, and decreed that the scheme for the disposition of the fund in controversy, reported and suggested to this Court for adoption by the Master in his said report, be, and the same is, disapproved and rejected.

And it is further ordered, adjudged, and decreed that said fund, and the whole thereof, be, and the same is hereby, vested in Leonard G. Hardy, in trust, to be by him invested to the best advantage, having in view the security of the fund as well as the income to be derived from the investment.

And to collect and receive the proceeds of all such investments and to apply such proceeds, or such portion thereof, and so much of the principal from time to time as may be necessary for that purpose, to the support and aid of the poor members of the Church of Jesus Christ of Latter-day Saints, and to the building and repairing of houses of worship for the members of said Church.

And it is further ordered, adjudged, and decreed that the said Leonard G. Hardy be required to give a bond to the Government of the United States in the sum of five

hundred thousand ($500,000) dollars, to be approved by this Court or the chief justice thereof, and to be conditioned for the faithful performance of his duties as such trustee.

And it is further ordered, adjudged, and decreed that the said Leonard G. Hardy, as such trustee, be, and he is hereby, required to make a report to this Court on the first day of January of each year of his administration of said trust.

Record, pp. 198 and 199.

That an appeal was taken by the United States from said order or decree of the Supreme Court of Utah Territory, and said cause is now pending in this Court on said appeal.

That Congress, by joint resolution, approved October 25, 1893, entitled "Joint resolution providing for the disposition of certain personal property and money now in the hands of a receiver of the Church of Jesus Christ of Latter-day Saints, appointed by the Supreme Court of Utah, and authorizing its application to the charitable purposes of said Church," enacted as follows, to wit:

Whereas, The corporation of the Church of Jesus Christ of Latter-day Saints was dissolved by act of Congress of March third, eighteen hundred and eighty-seven; and

Whereas, The personal property and money belonging to the said corporation is now in the hands of a receiver appointed by the Supreme Court of the Territory of Utah; and

Whereas, According to a decision of the Supreme Court of the United States the said property, in absence of other disposition by act of Congress, is subject to be applied to such charitable uses, lawful in their nature, as may most nearly correspond to the purposes for which said property was originally destined; and

Whereas, Said property is the result of contributions and donations made by members of said Church, and was

designed to be devoted to the charitable uses thereof under the direction and control of the first presidency of the said Church ; and

Whereas, Said Church has discontinued the practice of polygamy and no longer encourages or gives countenance in any manner to practices in violation of law, or contrary to good morals or public policy ; and if the said personal property is restored to the said Church it will not be devoted to any such unlawful purpose : Therefore,

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled, That the said personal property and money now in the hands of such receiver, not arising from the sale or rents of real estate since March third, eighteen hundred and eighty-seven, be, and the same is hereby, restored to the said Church of Jesus Christ of Latter-day Saints, to be applied under the direction and control of the first presidency of said Church to the charitable uses and purposes thereof: That is to say; For the payment of the debts for which said Church is legally or equitably liable, for the relief of the poor and distressed members of said Church, for the education of the children of such members, and for the building and repair of houses of worship for the use of said Church, but in which the rightfulness of the practice of polygamy shall not be inculcated. And the said receiver, after deducting the expenses of his receivership, under the direction of the said supreme court of the Territory of Utah, is hereby required to deliver the said property and money to the persons now constituting the presidency of said Church, or to such person or persons as they may designate to be held and applied generally to the charitable uses and purposes of said Church as aforesaid.

These appellees now move this Court to, reverse the said decree of the Supreme Court of the Territory of Utah, and enter a decree requiring the receiver heretofore appointed in this case by said Supreme Court, and who

now holds the personal property and money belonging to the late corporation of the Church of Jesus Christ of Latter-day Saints, to deliver all of said personal property and money not arising from the sale or rents of real estate since March 3, 1887, remaining in his hands after deducting the expenses of his receivership, to the persons now constituting the first presidency of said Church of Jesus Christ of Latter-day Saints, or to such person or persons as they may designate, to be held and applied, under the direction and control of the said first presidency of said Church, to the charitable uses and purposes thereof; that is to say: For the payment of the debts for which said Church is legally or equitably liable, for the relief of the poor and distressed members of said Church, for the education of the children of such members, and for the building and repair of houses of worship for the use of said Church, but in which the rightfulness of the practice of polygamy shall not be inculcated. And that the cause be remanded to the Supreme Court of the Territory of Utah, with directions to take such further proceedings as may be necessary to carry into effect such decree of this Court.

FRANKLIN S. RICHARDS,
For Appellees.

IN THE

Supreme Court of the United States.

No. 887.

THE UNITED STATES, APPELLANT,

v.

THE LATE CORPORATION OF THE CHURCH OF JESUS CHRIST OF LATTER DAY SAINTS ET AL.

The United States has accepted service of the notice of the motion proposed by the appellees in this case, and without opposing or consenting to the motion submits the matter to the court: respectfully submitting for the consideration of the court the question as to whether the decree that should be made in the cause, by reason of the recent joint resolution of Congress, should be made by the Supreme Court of the United States, or the supreme court of the Territory of Utah, having original jurisdiction in the cause.

The United States does not appear to have any further interest in the cause, the subject matter involved therein being disposed of by the joint resolution of Congress.

Should the court be of opinion that the supreme court of the Territory of Utah is the proper tribunal to effectuate by

its decree the action of Congress, the cause might be remanded to that court for such decree as may be proper to be made therein.

HOLMES CONRAD,
Assistant Attorney-General.

(Indorsed:) Case No. 15257. Supreme Court United States, October term, 1893. Term No., 887. The United States, appellant, *v.* The Late Corporation, etc. Statement of Attorney-General as to entry of decree. Filed October 28, 1893.

150 U. S. 150

IN THE

SUPREME COURT OF THE UNITED STATES.

EX PARTE LEWIS E. PARSONS, JR.

PETITION FOR WRIT OF MANDAMUS.

J. A. W. SMITH,
DAVID D. SHELBY,
For Petitioner.

Roberts & Son, Printers, Birmingham, Ala.

IN THE

SUPREME COURT OF THE UNITED STATES.

EX PARTE LEWIS E. PARSONS, JR.

PETITION FOR WRIT OF MANDAMUS.

Petitioner Lewis E. Parsons, Jr., moves the Court for leave to file this petition, and for a rule requiring the Honorable John Bruce, Judge of the District Court of the United States for the Middle and Northern Districts of Alabama, and who held the term of the Circuit Court for the Southern Division of the Northern District of Alabama at which the rulings and other actions, in said petition complained of, were made and done, to show cause, if any there be, why a mandamus should not issue commanding him to vacate an order made and entered in the said Circuit Court for the Southern Division of the Northern District of Alabama, on the 20th day of June, 1893, commanding the petitioner to turn over to Emmet O'Neal the books, papers, and other *insignia* of office appertaining to the office of United States Attorney for the Northern District of Alabama, and why petitioner should not be reinstated in said office.

And also to show cause why the petitioner should not have such other and further relief in the premises as may be proper.

J. A. W. SMITH,
DAVID D. SHELBY,
Attorneys for Petitioner.

To the Supreme Court of the United States:

Petitioner Lewis E. Parsons, Jr., respectfully shows to the Court—

1. That on the fourth day of February, 1890, he was appointed by the President of the United States, with the advice and consent of the Senate, United States Attorney for the Northern District of Alabama, and that within a few days thereafter he qualified as such Attorney, and has faithfully performed all the duties of said office from then until the 20th day of June, 1893.

Petitioner was appointed for a term of four years, as required by the statutes, and said term has not yet expired. Petitioner has done nothing to forfeit his right to said office; he has not resigned and has never been impeached, and has constantly resided and still resides in said district.

2. On the 26th day of May, 1893, a letter was written to petitioner, signed "Grover Cleveland," purporting to remove petitioner from the office of United States Attorney—no cause being assigned therefor, and no notice was ever given to petitioner of any accusation against him.

3. On the 20th day of June, 1893, Emmett O'Neal appeared in the United States Circuit Court for the Southern Division of the Northern District of Alabama, the Honorable John Bruce, the District Judge, being present and holding said term of said Court, and presented to the Court a commission or letter of appointment signed by the President of the United States, purporting to authorize the said Emmet O'Neal to perform the duties of the office of United States Attorney for said district "until the end of the next session of the Senate of the United States and no longer," and requested the Court to recognize him as such United States Attorney. Petitioner also appeared before

said Court at the same time, demanding the recognition of the Court as the Attorney of the United States, and submitted to the Court his commission as such officer, and, further, offered to prove that no vacancy existed in said office at the date of the issuance of the commission to O'Neal as aforesaid or at any time since petitioner's appointment as aforesaid.

4. The Court recognized said Emmet O'Neal as the Attorney of the United States; whereupon petitioner again declined to turn over to him the books, papers, and other property appertaining to the said office, which had been previously demanded and refused. Whereupon the said Court made an order, upon the motion of said Emmett O'Neal, commanding petitioner to turn over to the said O'Neal all the books, papers, and other property appertaining to said office to the said O'Neal, and, in obedience to which, petitioner turned over the said property to said O'Neal, and since which time the said O'Neal has been in possession of and performing all the duties of said office.

5. That on June 21st, 1893, petitioner again appeared in the said Circuit Court and moved the Court to vacate the said order requiring him to turn over to O'Neal the books, papers, etc., appertaining to the said office and to reinstate petitioner in office, which said motion was called to the attention of the Court, but the Court refused to pass upon the same; whereupon petitioner, still insisting upon his right to the said office, withdrew the said motion, that its pendency would not embarrass him in an effort to have the action of the said Circuit Court reviewed by this Court.

Wherefore petitioner prays that a writ of mandamus issue by this honorable Court, commanding the said John Bruce, as Judge of the Circuit Court for the Northern and Middle Districts of Alabama, to vacate the said order of said Court commanding petitioner to turn over to said Emmet O'Neal the books, papers, and property appertaining to the office of United States Attorney for said Northern District of Alabama, and to reinstate petitioner

in said office. And petitioner prays for such other and further relief as may be proper.

In support of this petition reference is made to the certified copy of the record of the lower Court in regard to this matter herewith filed.

J. A. W. SMITH,
DAVID D. SHELBY,
Att'ys for Petitioner.

Lewis E. Parsons, Jr., being duly sworn, says on oath that the statements made in the foregoing petition are true.

This 6th day of October, 1893.

LEWIS E. PARSONS, JR.

N. W. TRIMBLE,
Clerk U. S. Circuit Court for Northern District of Alabama.

TRANSCRIPT OF RECORD.

IN RE. UNITED STATES ATTORNEY'S OFFICE FOR NORTHERN DISTRICT OF ALABAMA.

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THE UNITED STATES OF AMERICA,

NORTHERN DISTRICT OF ALABAMA, SOUTHERN DIVISION.

Pleas had at a regular term of the Circuit Court of the United States of America for the Southern Division of the Northern District of Alabama, begun and held at the United States Court House in the city of Birmingham, in said district, on the first Monday of March, it being the sixth day thereof, in the year of our Lord one thousand eight hundred and ninety-three, and of the independence of the United States the one hundred and seventeenth year. Present: The Honorable John Bruce, Judge of the District Court of the Courts of the United States for the Middle and Northern Districts of Alabama, presiding.

In the Circuit Court of the United States for the Southern Division of the Northern District of Alabama.

To the Hon. Circuit Judge of the United States:

Now comes Emmett O'Neal, Attorney of the United States for the Northern District of Alabama, who has been heretofore recognized by this honorable Court as the Attorney of the United States for the Northern District of Alabama, duly commissioned and qualified, and represents and shows to the Court that he has, as such United States Attorney of the Northern District of Alabama, demanded of Lewis E. Parsons, Jr., the former incumbent of said office, the possession and custody of the books, papers, and property belonging to the said office, and that the said Lewis E. Parsons, Jr., has refused and declined to surrender or deliver up the same, but, by his counsel, has in open court announced he would decline and refuse to surrender the same without being ordered so to do by the Court.

Wherefore the said Emmet O'Neal, attorney of the United States of the Northern District of Alabama, moves the Court for an order requiring the said Lewis E. Parsons, Jr., to forthwith turn over and deliver to the said Emmet O'Neal, as Attorney for the United States for the Northern District of Alabama, all the

books, papers, and property pertaining to or belonging to the said office of Attorney of the United States for the Northern District of Alabama, taking the receipt of said Emmet O'Neal as such Attorney of the United States for the Northern District of Alabama therefor.

EMMET O'NEAL,
U. S. District Att'y.

Notice accepted this 20th June, 1893.

SMITH & LOWE,
Att'ys for L. E. Parsons.

[Endorsed thereon:]
In re O'Neal. Motion.
Filed June 20, 1893.
N. W. TRIMBLE, Clerk.

In the Circuit Court of the United States for Southern Division of the Northern District of Alabama.

In the matter of the motion of Emmet O'Neal.

The said Lewis E. Parsons, Jr., demurs to the said motion, and, as grounds of demurrer, assigns the following:

1. The Constitution of the United States does not confer on the President of the United States the authority to remove said Parsons from the said office of United States District Attorney and to appoint said O'Neal.

2. The Constitution and laws of the United States do not confer on the President the authority to remove said Parsons from said office and to appoint said O'Neal.

3. The Constitution does not confer on the President the power to remove said Parsons from said office and to appoint said O'Neal thereto during a recess of the Senate.

4. The Court has no jurisdiction to make the order prayed for in the motion.

5. There are no pleadings, or papers, or suit, or due process of law to authorize the order prayed for in the motion.

6. That the said Court had no jurisdiction or authority to recognize the said Emmet O'Neal as stated in said motion and that there were no pleadings, suit, or due process of law to

authorize the said Court to recognize the said Emmet O'Neal as United States Attorney in said motion.

SMITH & LOWE and
D. D. SHELBY,
Atty's for Lewis E. Parsons, Jr.

[Endorsed thereon:]
Parsons' demurrer to O'Neal's motion.
Filed June 20, 1893.
N. W. TRIMBLE, Clerk.

In the Circuit Court of the United States for the Southern Division of the Northern District of Alabama.

In the matter of the motion of Emmet O'Neal to require Lewis E. Parsons, Jr., to turn over to him, as the United States Attorney for the Northern District of Alabama, the books and other property in his possession belonging to the office of United States Attorney, etc.

Comes said Lewis E. Parsons, Jr., in his own proper person and by counsel, and, for answer to said motion, says:

1. That this respondent was duly appointed and commissioned by the President of the United States on the 4th day of February, 1890, the United States Attorney for the Northern District of Alabama, his said commission authorizing and empowering him to perform the duties of said office for the term of four years from the date of said commission, which said term is fixed by law.

2. That respondent qualified and entered upon the duties of said office within a very short time after the date of said commission and before the first day of March, 1890, under his said appointment, and immediately entered upon the duties of said office, and has performed said duties of said office from the said first day of March, 1890, up to the present time.

3. That respondent has never resigned said office; that he now resides and has continued to reside since the date of said commission in the city of Birmingham, Alabama, and within the Northern District of Alabama, and has given his personal atten-

tion to the duties of his office, and no cause of vacancy whatever now exists or has existed since his appointment to said office.

4. That respondent has performed the duties of said office in strict accordance with law.

5. That on, to-wit, the 29th day of May, 1893, respondent received a communication from the President of the United States in words as follows:

"EXECUTIVE MANSION,
"WASHINGTON, D. C., May 26, 1893.

"SIR—You are hereby removed from the office of Attorney of the United States for the Northern and Middle Districts of Alabama, to take effect upon the appointment and qualification of your successor.

"GROVER CLEVELAND.

"To Lewis E. Parsons, Jr., Birmingham, Ala."

6. Respondent had no notice of any charge whatever having been preferred against him prior to said 29th day of May, 1893, and has not yet had any notice of the nature and character of any charge authorizing his removal having been preferred against him.

7. To the said communication from the President, set out in the 5th paragraph of this answer, respondent replied as follows:

"BIRMINGHAM, ALABAMA, June 5, 1893.

"To the President of the United States, Washington, D. C.:

"SIR—Your communication of the 26th May, 1893, assuming to remove me from the office of United States District Attorney for the Northern District of Alabama, has been received and duly considered.

"My commission bears date February 4, 1890, and authorizes me to hold said office for the definite term of four years from the date thereof fixed by law, and I am advised by counsel, and it is my own opinion, that you have no power to remove me, and I respectfully decline to surrender the office.

"Very respectfully,
"LEWIS E. PARSONS, JR.,
"United States Attorney for the
"Northern District of Alabama."

Which said reply was duly mailed to the President of the United States, and upon the same day, namely, the 5th day of June, 1893, he notified both the Attorney General of the United States and Emmet O'Neal that he declined to surrender the office of United States District Attorney for the Northern District of Alabama to said O'Neal, who was named by the President as his successor, his (O'Neal's) appointment bearing date May 26, 1893.

8. Respondent has continued in possession of said office and of the books and papers belonging thereto from the date he entered upon the duties of his said office, in 1890, up to the present time, and now here in open court respondent claims the right, and alleges that his duty requires of him, and he now offers to represent the United States in all civil and criminal cases pending in the United States Circuit and District Courts for the Northern District of Alabama, and to perform all other duties required of him by law as such United States Attorney, and he requests the Court so to permit him to represent the United States and to discharge all the duties of said office.

That the said O'Neal was never recognized as United States Attorney by this Court until yesterday, and such recognition was without any suit for such purpose, and, in view of the facts herein set out, the said respondent appearing at the time asking to be allowed to perform his duties as such U. S. Attorney.

9. That this Court had no jurisdiction to adjudicate the right to said office in any proceeding in court, and the mere fact that this Court has heretofore recognized said Emmet O'Neal as the United States Attorney does not constitute him such Attorney. Said Lewis E. Parsons assigns the following grounds by way of objection and demurrer to the granting of said motion.

(*a*) This Court has no jurisdiction to make the order prayed for in the motion.

(*b*) Respondent claims to have a vested right to said office for the full term covered by his commission, to deprive him of which the Court had no jurisdiction in the matter wherein it is claimed he recognized the said O'Neal as United States Attorney.

(*c*) The President of the United States had no power to remove this respondent from the said office before the expiration of his term.

(*d*) The said order or communication from the President purporting to remove this respondent from his said office is void.

(*e*) There being no vacancy in said office, the appointment of Emmet O'Neal as the successor of respondent is void.

(*f*) There is no authority under the Constitution or laws of the United States to create a vacancy in the office of United States Attorney by the peremptory removal of an incumbent, holding under an unexpired commission, during a recess of the Senate and to fill such vacancy by the appointment of a successor.

SMITH & LOWE and
D. D. SHELBY,
Att'ys for Respondent, Lewis E. Parsons, Jr.

[Endorsed thereon:]
In re Emmet O'Neal. Answer.
Filed June 20, 1893.
N. W. TRIMBLE, Clerk.

Now comes Emmet O'Neal, U. S. District Attorney, by counsel, and by leave of the Court files his motion for an order to require Lewis E. Parsons, Jr., former District Attorney, to turn over and deliver to him all the books, papers, and property belonging to the office of U.S. Attorney for the Northern District of Alabama.

And thereupon comes Lewis E. Parsons, Jr., by his counsel, and interposes and files his demurrer to said motion.

Whereupon said demurrer of said Lewis E. Parsons, Jr., to said motion of Emmet O'Neal coming on to be heard, and after being duly considered by the Court, it is ordered that said demurrer be and the same is hereby overruled.

And thereupon comes Lewis E. Parsons, Jr., by his counsel, and by leave of the Court files his answer to the aforesaid motion of Emmet O'Neal as U. S. Attorney.

Now comes Emmet O'Neal, District Attorney of the United States for the Northern District of Alabama, and represents and shows to the Court that he has demanded of Lewis E. Parsons, Jr., the former U. S. District Attorney for said District, the possession and custody of the books, papers and property belonging

to the said office, and that the said Lewis E. Parsons, Jr., has refused to surrender the same; and the said Emmet O'Neal now moves the Court for an order to require the said Lewis E. Parsons Jr., to surrender and turn over to him the possession and custody of said books, papers, and property, and counsel for the respective parties being heard: It is considered by the Court that the said Lewis E. Parsons, Jr., the former U. S. District Attorney for the Northern District of Alabama, do forthwith, or as soon as practicable, turn over and deliver to the said Emmet O'Neal, as District Attorney of the United States for the Northern District of Alabama, all the books, papers, and property pertaining or belonging to the said office of District Attorney of the United States for the Northern District of Alabama, taking the receipt of the said Emmet O'Neal, District Attorney for the U. S. for the Northern District of Alabama.

June 20, 1893. JNO. BRUCE, Judge.

Whereupon Lewis E. Parsons, Jr., by his counsel, duly excepted to the foregoing ruling and orders, and filed his bill of exceptions and asked leave to file a motion to vacate and set aside said order.

Be it remembered, that, in the United States Circuit Court for the Southern Division of the Northern District of Alabama, held on the 20th day of June, 1893, Hon. John Bruce, District Judge, present and presiding, the following proceedings were had in the matter of the motion of Emmet O'Neal, as U. S. Attorney, to require Lewis E. Parsons, Jr., to turn over to him the books, documents, and other property pertaining to United States Attorney's office, and the property of the United States, etc., were had, to-wit:

Emmet O'Neal appeared in court and moved the Court as follows:

"In the Circuit Court of the United States for the Southern Division of the Northern District of Alabama.

"To the Hon. Circuit Judge of the United States:

"Now comes Emmet O'Neal, Attorney of the United States

for the Northern District of Alabama, who has been heretofore recognized by this honorable Court as the Attorney of the United States for the Northern District of Alabama, duly commissioned and qualified, and represents and shows to the Court that he has, as such United States Attorney for the Northern District of Alabama, demanded of Lewis E. Parsons, Jr., the former incumbent of said office, the possession and custody of the books, papers, and property belonging to the said office, and that the said Lewis E. Parsons, Jr., has refused and declined to surrender or deliver up the same, but, by his counsel, has in open court announced he would decline and refuse to deliver the same without being ordered so to do by the Court.

"Wherefore the said Emmet O'Neal, Attorney of the United States of the Northern District of Alabama, moves the Court for an order requiring the said Lewis E. Parsons, Jr., to forthwith turn over and deliver to the said Emmett O'Neal, as Attorney for the United States for the Northern District of Alabama, all the books, papers, property appertaining to or belonging to the said office of Attorney of the United States of the Northern District of Alabama, taking the receipt of the said Emmet O'Neal, as such Attorney of the United States for the Northern District of Alabama, therefor.

"EMMET O'NEAL,
"U. S. District Att'y."

Upon which said motion was endorsed the following:
"Notice accepted this 20th June, 1893.

"SMITH & LOWE,
"Att'ys for L. E. Parsons."

"In re O'Neal. Motion.
"Filed June 20th, 1893.
"N. W. TRIMBLE, Clerk."

To the above motion the said Lewis E. Parsons, Jr., filed the following demurrers:

"The said Lewis E. Parsons, Jr., demurs to the said motion, and as grounds of demurrer assigns the following:

"1. The Constitution of the United States does not confer on the President of the United States the authority to remove

said Parsons from the said office of United States District Attorney and to appoint said O'Neal.

"2. The Constitution and laws of the United States do not confer on the President the authority to remove said Parsons from said office and to appoint said O'Neal.

"3. The Constitution does not confer on the President the power to remove said Parsons from said office and to appoint said O'Neal thereto during a recess of the Senate.

"4. The Court has no jurisdiction to make the order prayed for in the motion.

"5. There are no pleadings, or papers, or suit, or due process of law to authorize the order prayed for in the motion.

"6. That the said Court had no jurisdiction or authority to recognize the said Emmet O'Neal as stated in said motion, and there were no pleadings, suit, or due process of law to authorize the Court to recognize the said Emmit O'Neal as United States Attorney in said motion.

"SMITH & LOWE,
"D. D. SHELBY,
"Atty's for Lewis E. Parsons, Jr."

Which said demurrers were overruled by the Court, and to which action of the Court the said Lewis E. Parsons, Jr., then and there duly excepted.

After the overruling of said demurrers by the Court, the said Lewis E. Parsons, Jr., filed an answer to said motion, which is in words and figures as follows:

"In the Circuit Court of the United States for the Southern Division of the Northern District of Alabama.

"In the matter of the motion of Emmet O'Neal to require Lewis E. Parsons, Jr., to turn over to him as the United States Attorney for the Northern District of Alabama, the books and the property in his possession belonging to the office of United States Attorney, etc.

"Comes said Lewis E. Parsons, Jr, in his own proper person and by counsel, and for answer to said motion (not waiving his demurrer), says:

"1. That respondent, said Lewis E. Parsons, Jr., was duly appointed and commissioned by the President of the United States Attorney for the Northern District of Alabama, his said commission authorizing and empowering him to perform the duties of said office for the term of four years from the date of his said commission, which said term is fixed by law.

"2. That respondent qualified and entered upon the duties of said office within a very short time after the date of said commission, and before the first day of March, 1890, under his said appointment, and immediately entered upon the duties of said office, and has performed said duties of said office from the first day of March, 1890, up to the present time.

"3. That respondent has never resigned said office; that he now resides and has continued to reside since the date of his said commission in the city of Birmingham, Alabama, and within the Northern District of Alabama, and has given his personal attention to the duties of his office, and no cause of vacancy now exists or has existed since his appointment to said office.

"4. That respondent has faithfully performed the duties of said office in strict accordance with law.

"5. That on, to-wit, the 29th day of May, 1893, respondent received a communication from the President of the United States in words as follows:

"'EXECUTIVE MANSION,

"'WASHINGTON, D. C., May 26, 1893.

"'SIR—You are hereby removed from the office of Attorney of the United States for the Northern and Middle Districts of Alabama, to take effect upon the appointment and qualification of your successor.

"'GROVER CLEVELAND.

"'To Lewis E. Parsons, Jr., Birmingham, Ala.'

"6. Respondent had no notice of any charge whatever having been preferred against him prior to said 29th day of May, 1893, and has not yet had any notice of the nature and character of any charge authorizing his removal having been preferred against him.

"7. To the said communication from the President, set out in the fifth paragraph of this answer, respondent replied as follows:

"'BIRMINGHAM, ALABAMA, June 5, 1893.

"'To the President of the United States, Washington, D. C.:

"'SIR—Your communication of the 26th of May, 1893, assuming to remove me from the office of United States District Attorney for the Northern District of Alabama, has been received and duly considered.

"'My commission bears date February 4, 1890, and authorizes me to hold said office for the definite term of four years from the date thereof, fixed by law, and I am advised by counsel, and it is my own opinion that you have no power to remove me, and I respectfully decline to surrender the office.

"'Very respectfully,

"'LEWIS E. PARSONS, JR.,

"'United States Attorney for the

"'Northern District of Alabama.'

"Which said reply was duly mailed to the President of the United States, and upon the same day, namely, the 5th day of June, 1893, he notified both the Attorney General of the United States and Emmet O'Neal that he declined to surrender the office of United States Attorney for the Northern District of Alabama to said O'Neal, who was named by the President as his successor, his (O'Neal's) appointment bearing date May 26, 1893.

"8. Respondent has continued in possession of said office, and of the books and papers belonging thereto, from the time he entered upon the duties of his said office, in 1890, up to the present time, and now here in open court respondent claims the right, and alleges that his duty requires of him, and he now offers, to represent the United States in all civil and criminal cases pending in the United States Circuit and District Courts for the Northern District of Alabama, and to perform all other duties required of him by law as such United States Attorney, and he requests the Court so to permit him to represent the United States and to discharge all the duties of said office.

"That the said O'Neal was never recognized as United States Attorney by this Court until yesterday, and such recognition was without any suit for such purpose, and in view of the facts herein set out, the said respondent appearing at the time asking to be allowed to perform his duties as United States Attorney,

"9. That this Court has no jurisdiction to adjudicate the

right to said office in any proceeding in court, and the mere fact that the Court recognized said Emmet O'Neal as the United States Attorney does not constitute him such Attorney. Said Lewis E. Parsons Jr., assigns the following grounds by way of objection and demurrer to the granting of said motion:

"(*a*) This Court has no jurisdiction to make the order prayed for.

"(*b*) Respondent claims to have a vested right to said office for the full term covered by his commission, to deprive him of which the Court had no jurisdiction in the matter wherein it is claimed that the Court recognized O'Neal.

"(*c*) The President of the United States had no power to remove this respondent from the said office before the expiration of his term.

"(*d*) The said order or communication from the President purporting to remove this respondent from his said office is void.

"(*e*) There being no vacancy in said office, the appointment of Emmet O'Neal as the successor of respondent is void.

"(*f*) There is no authority vested in the President by the Constitution or laws of the United States to create a vacancy in the office of United States Attorney by the peremptory removal of an incumbent, holding under an unexpired commission, during a recess of the Senate and to fill such vacancy by the appointment of a successor.

"SMITH & LOWE,
"D. D. SHELBY,
"Att'ys for Respondent, Lewis E. Parsons."

Upon which said answer is endorsed the following:

"In re Emmet O'Neal. Answer.
"Filed June 20, 1893.
"N. W. TRIMBLE, Clerk."

In support of his said answer, Lewis E. Parsons, Jr., introduced in evidence a commission signed by President Harrison, authorizing him to perform the duties of United States Attorney for the Northern District of Alabama, which said commission bears date February 4, 1890, and is in words and figures following, viz:

BENJAMIN HARRISON,

"President of the United States of America,

"To all who see these presents, greeting:

"Know ye, that, reposing special trust and confidence in the integrity, ability, and learning of Lewis E. Parsons, Jr., of Alabama, I have nominated, and, by and with the advice and consent of the Senate, do appoint him attorney of the United States in and for the Northern and Middle Districts of Alabama, and do authorize and empower him to execute and fulfill the duties of that office according to law, and to have and to hold the said office, with all the powers, privileges, and emoluments to the same of right appertaining unto him, the said Lewis E. Parsons, Jr., for the term of four years from the day of the date hereof, subject to the conditions prescribed by law.

"In witness whereof, I have caused these letters to be made patent and the seal of the Department of Justice to be thereto affixed.

"Given under my hand, at the City of Washington, the 4th day of February, in the year of our Lord one thousand eight hundred and ninety, and of the Independence of the United States of America the one hundred and fourteenth.

"By the President.

"BENJ. HARRISON.

Seal of Departm'nt of Justice.

"W. H. H. MILLER,

"Attorney General."

Respondent next introduced in evidence a letter from the President, a copy of which is set out in his answer herein above set out.

Respondent then introduced in evidence a letter which he wrote the President in reply to one last above mentioned, and a copy of which reply is also set out in respondent's answer and herein above set out.

Respondent, Lewis E. Parsons, Jr., was then examined in his own behalf and testified as follows:

"On the opening of the court on the 19th day of June, 1893, I was present in court and objected and protested against the recognition of said Emmet O'Neal as the United States Attorney,

and also on said day offered myself to perform the duties of said office. I was appointed United States Attorney for the Northern District of Alabama in June, 1889, and soon thereafter entered upon the discharge of the duties of said office. On the 4th day of February, 1890, I was confirmed by the Senate of the United States and qualified, and since then have given my personal attention to the duties of the office, and have ever since my appointment resided in Birmingham, in said Northern District of Alabama. I was present at the opening of the present adjourned term of the court, on the 19th instant, ready to perform the duties of the United States Attorney for the Northern District of Alabama, and am now ready and offer to continue in the discharge of the duties of said office. I declined to surrender said office to O'Neal on his demand being made for the same. He claims to have been appointed to said office on May 26, 1893, and said demand and refusal were since that time."

The Court considered, in connection with the evidence introduced by respondent, the commission of Emmet O'Neal, under which he duly qualified, which was exhibited to the Court on the 19th of June, 1893, when he was recognized as the United States Attorney. The said commission of Emmet O'Neal, by virtue of which he claims to be the United States Attorney for the Northern District of Alabama, is in words as follows:

"GROVER CLEVELAND,

"President of the United States of America,

"To all who shall see these presents, greeting:

"Know ye, that, reposing special trust and confidence in the integrity, ability, and learning of Emmet O'Neal, of Alabama, I do appoint him to be Attorney of the United States for the Northern District of Alabama, and do authorize and empower him to execute and fulfill the duties of that office according to law; and to have and to hold the said office, with all the powers, privileges, and emoluments thereto legally appertaining, unto him, the said Emmet O'Neal, until the end of the next session of the Senate of the United States, and no longer; subject to the conditions prescribed by law.

"In witness whereof I have caused these letters to be made

patent and the seal of the Department of Justice to be hereunto affixed.

"Given under my hand, at the City of Washington, the 26th day of May in the year of our Lord one thousand eight hundred and ninety-three, and of the Independence of the United States of America the one hundred and seventeenth.

"By the President.

Seal of Department of Justice.

"GROVER CLEVELAND.

"RICHARD OLNEY,

"Attorney General."

The foregoing being all the evidence introduced upon the hearing of said motion made by Emmet O'Neal herein before set out, the Court granted the same by making the following order:

"Now comes Emmet O'Neal, District Attorney of the United States for the Northern District of Alabama, and represents and shows to the Court that he has demanded of Lewis E. Parsons, Jr., the former United States District Attorney for said District, the possession and custody of the books, papers, and property belonging to said office, and the said Lewis E. Parsons, Jr., has refused to surrender the same; and the said Emmet O'Neal now moves the Court for an order to require the said Lewis E. Parsons, Jr., to surrender and turn over to him the possession and custody of the said books, papers, and property, and counsel for the respective parties being heard;

"It is considered by the Court that the said Lewis E. Parsons, Jr., the former United States District Attorney for the Northern District of Alabama, do forthwith, or as soon as practicable, turn over and deliver to said Emmet O'Neal, as District Attorney of the United States for the Northern District of Alabama, all the books, papers, and property pertaining or belonging to said office of District Attorney of the United States for the Northern District of Alabama, taking the receipt of the said Emmet O'Neal, District Attorney of the United States for the Northern District of Alabama, therefor.

"JOHN BRUCE, Judge."

To which action of the Court, in granting said motion and

making the said order herein above set out, the said Lewis E. Parsons, Jr., then and there duly excepted.

"Said Lewis E. Parsons, Jr., tenders this, his bill of exceptions, and asks that it be signed and sealed by the presiding Judge who tried said motion and made said order, and asks that it be made a part of the record in said cause, which is accordingly done this 20th day of June, A. D. 1893.

"JOHN BRUCE. [Seal.]
"Judge."

"In the Circuit Court of the United States for the Northern District of Alabama, Southern Division:

"To the Honorable the Judges of the said Court:

"Your petitioner and movant, Lewis E. Parsons, Jr., respectfully shows to the Court:

"That on the 4th day of February, 1890, he was appointed by the President, by and with the consent of the Senate, United States Attorney for the Northern District of Alabama, and in a few days thereafter he qualified as such Attorney, and has performed all the duties of said office from that day till the 20th day of June, 1893. A copy of petitioner's commission is made Exhibit A. to this petition and motion, and a part thereof. Petitioner was appointed for the term of four years as required by the statute of the United States, and said term has not yet expired. Petitioner has done nothing to forfeit his right to said office; he has not resigned and has not been impeached, and has continuously resided and now resides in said district. Petitioner has faithfully performed the duties of said office since his appointment and qualification. On the 26th day of May, 1893, a letter was written to petitioner and received by him, signed "Grover Cleveland," purporting to remove him from the office of United States Attorney. On the 20th day of June, 1893, Emmet O'Neal appeared in court and presented to the Court a commission or letter of appointment signed by the President of the United States, nominating the said Emmet O'Neal to said office of United States Attorney. By authority of said paper the said O'Neal had previously demanded of petitioner the books,

papers and other indicia of office appertaining to the office of United States Attorney, but petitioner continued to hold and refused to surrender the same. The said commission or paper held by said Emmet O'Neal was on its face apparently valid and operative, and being presented to the Court, but without suit or other proceedings in Court instituted for the purpose of testing the question of title to said office, or the question of the validity or invality of said commission or paper, the Court recognized the said Emmet O'Neal as United States Attorney for said District, and thereafter on, to-wit: the 20th day of June, 1893, upon the motion of said O'Neal, the Court made an order directing petitioner to turn over to said O'Neal the books, papers and other property of the United States appertaining to said office. In obedience to said order petitioner has turned over to said O'Neal the property therein mentioned, since which time said Emmet O'Neal has been in possession of said office of United States Attorney performing the duties thereof. A copy of the commission or letter of appointment to Emmet O'Neal is made Exhibit B and a part of this petition. Petitioner alleges that said commission shown by Exhibit B was issued without the advice and consent of the Senate, and that at its date there was no vacancy in the said office of United States Attorney for the Northern District of Alabama. That it was issued during a recess of the Senate. That the President has attempted by his said action to create and fill a vacancy in said office during a recess of the Senate, and contrary to law. Petitioner has no remedy in this Court except by this petition. Petitioner's said commission, now presented to this Court as a part of this petition, is valid and unexpired, and on the facts as stated the said commission of said Emmet O'Neal is invalid and void—although in its form, terms and execution it is apparently *prima facie* valid. The statutes of the United States did not authorize, but on the contrary forbade its issuance on the facts stated. The Constitution of the United States does not confer the right on the President to issue said commission on the facts herein stated.

"Petitioner prays and moves that the Court make an order and enter a judgment declaring the commission or letter of appointment issued to said Emmet O'Neal to be invalid, and issued without authority of law; and that petitioner be put in possession

of the said books, papers and other property appertaining to the said office of the United States Attorney for the Northern District of Alabama and that said order of Court of date June 20th, 1893, in regard thereto, be set aside, and that petitioner be permitted to perform the duties of said office until the expiration of his term fixed by law and by his said commission.

"Petitioner prays that Emmet O'Neal be given due and proper notice of this petition and motion.

"SMITH & LOWE.
"D. D. SHELBY,
"Attorneys for Petioner and Movant.

"Before me, N. W. Trimble, Clerk of said Court, personally came Lewis E. Parsons, Jr., who being duly sworn deposes and says that the statements contained in the foregoing petition and motion are true, to the best of his knowledge and belief.

"LEWIS E. PARSONS, JR.

"Sworn to subscribed before me this 21st day of June, 1893.

"N. W. TRIMBLE,
"Clerk.

"EXHIBIT A.

"Benjamin Harrison, President of the United States of America, to all who shall see these Presents, Greeting: Know ye, that reposing special trust and confidence in the integrity, ability and learning of Lewis E. Parsons, Jr., of Alabama, I have nominated, and by and with the advice and consent of the Senate, do appoint him Attorney of the United States in and for the Northern and Middle Districts of Alabama, and do authorize and empower him to execute and fulfill the duties of that office according to law, and to have and to hold the said office with all the powers, privileges and emoluments to the same of right appertaining unto him the said Lewis E. Parsons, Jr., for the term of four years from the day of the date hereof, subject to the conditions prescribed by law.

"In testimony whereof, I have caused these letters to be made patent and the seal of the Department of Justice the be hereunto affixed.

"Given under my hand at the City of Washington, on the

4th day of February, in the year of our Lord one thousand, eight hundred and ninety, and of the independence of the United States of America the one hundred and fourteenth.

"BENJ. HARRISON.

{Seal of Dep't of Justice.} "By the President,
"W. H. H. MILLER,
"Attorney General.

"EXHIBIT B.

"Grover Cleveland, President of the United States of America, to all who shall see these Presents, Greeting: Know ye, that reposing special trust and confidence in the integrity, ability and learning of Emmet O'Neal, of Alabama, I do appoint him to be Attorney of the United States for the Northern District of Alabama, and do authorize and empower him to execute and fulfill the duties of that office according to law; and to have and to hold the said office, with all the powers, privileges and emoluments thereunto legally appertaining, unto him the said Emmet O'Neal until the end of the next session of the Senate of the United States and no longer; subject to the conditions prescribed by law.

"In witness whereof I have caused these letters to be made patent and the seal of the Department of Justice to be hereunto affixed.

"Given under my hand at the City of Washington, the 26th day of May in the year of our Lord one thousand, eight hundred and ninety-three, and of the Independence of the United States of America, 117th.

"GROVER CLEVELAND.

{Seal of Dep't of Justice.} "By the President:
"RICHARD OLNEY,
"Attorney General."

[Endorsed thereon:]

"Petition and motion of L. E. Parsons, Jr.
"Filed June 21, 1893.
"N. W. TRIMBLE, Clerk.

In the matter of the office of U. S. Attorney.

Comes Lewis E. Parsons, Jr., by his counsel, and moves the Court to set down for hearing his petition and motion to vacate and set aside the order made on a former day of this term, requiring and directing him to turn over to Emmet O'Neal, Esq., the books, papers, etc., in the U. S. Attorney's office, and, after hearing counsel for both sides, the Court declined to set said petition and motion down for hearing and refused to entertain the same. Thereupon said L. E. Parsons, Jr., by his counsel, duly excepted to said refusal on the part of the Court and insisted upon said petition and motion being heard, and offered to prove the facts stated therein.

Be it remembered, that in the United States Circuit Court for the Southern Division of the Northern District of Alabama, on to-wit: the 16th day of July, 1893, the Honorable John Bruce, District Judge, present and presiding, in the matter of the motion of Lewis E. Parsons, Jr., filed in said Court on the 21st day of June, 1893, the following proceedings were had, to-wit:

The said motion was called to the attention of the Court and is in words and figures, following:

"In the Circuit Court of the United States for the Northern District of Alabama, Southern Division:

"To the Honorable the Judge of the said Court:

"Your petitioner and movant, Lewis E. Parsons, Jr., respectfully shows to the Court:

"That on the fourth day of February, 1890, he was appointed by the President, by and with the advice and consent of the Senate, United States Attorney for the Northern District of Alabama, and within a few days thereafter he qualified as such Attorney, and has performed all the duties of said office from that day till the 20th day of June, 1893. A copy of petitioner's commission is made Exhibit A to this petition and motion and a part thereof. Petitioner was appointed for the term of four years as required by the statutes of the United States, and said term has not yet expired. Petitioner has done nothing to forfeit his right to said office; he has not resigned and has never been

impeached, and has continuously resided and now resides in said District. Petitioner has faithfully performed the duties of said office since his appointment and qualification. On the 26th day of May, 1893, a letter was written to petitioner and received by him, signed "Grover Cleveland," purporting to remove him from the office of United States Attorney. On the 20th day of June, 1893, Emmet O'Neal appeared in Court and presented to the Court a commission or letter of appointment signed by the Presiden of the United States nominating the said Emmet O'Neal to said office of United States Attorney. By authority of said paper the said O'Neal had previously demanded of petitioner the books, papers and other indicia of office appertaining to the office of United States Attorney, but petitioner continued to hold and refused to surrender the same. The said commission or paper held by said Emmet O'Neal was on its face apparently valid and operative, and being presented to the Court -but without suit or other proceeding in court instituted for the purpose of testing the question of title to said office, or the question of validity or invalidity of said commission or paper, the Court recognized the said Emmet O'Neal as United States Attorney for said District, and thereafter on, to-wit: the 20th day of June, 1893, upon the motion of said O'Neal, the Court made an order directing petitioner to turn over to said O'Neal the books, papers and other property of the United States appertaining to said office. In obedience to said order petitioner has turned over to said O'Neal the property therein mentioned, since which time said Emmet O'Neal has been in possession of said office of United States Attorney performing the duties thereof. The copy of the commission or letter of appointment to Emmet O'Neal is made Exhibit B and a part of this petition. Petitioner alleges that said commission shown by Exhibit B was issued without the advice and consent of the Senate, and that at its date there was no vacancy in the said office of the United States Attorney for the Northern District of Alabama. That it was issued during a recess of the Senate. That the President has attempted by his said action to create and fill a vacancy in said office during a recess of the Senate, and contrary to law. Petitioner has no remedy in this Court except by this petition. Petitioner's said commission, now presented to this Court as a

part of this petition, is valid and unexpired, and on the facts as stated the said commission of said Emmet O'Neal is invalid and void—although in its form, terms and execution it is apparently and *prima facie* valid. The statutes of the United States did not authorize, but on the contrary forbade its issuance on the facts stated. The Constitution of the United States does not confer the right on the President to issue said commission on the facts herein stated.

"Petitioner prays and moves that the Court make an order and enter a judgment declaring or letter of appointment issued to said Emmet O'Neal to be invalid, and issued without authority of law; and that petitioner be put in possession of the said books, papers and other property appertaining to the said office of United States Attorney for the Northern District of Alabama and that said order of Court date June 20th, 1893, in regard thereto, be set aside, and that petitioner be permitted to perform the duties of said office until the expiration of his term fixed by law and by his said commission.

Petitioner prays that Emmet O'Neal be gived due and proper notice of this petition and motion.

"SMITH & LOWE,
"D. D. SHELBY,
"Attorneys for Petitioner and Movant.

"Before me, N. W. Trimble, Clerk of said Court, personally appeared Lewis E. Parsons, Jr., who being duly sworn deposes and says that the statements contained in the foregoing petition and motion are true, to the best of his knowledge and belief.

"LEWIS E. PARSONS, JR.

"Sworn to and subscribed before me this 21st day of June, 1893.

"[Signed.] N. W. TRIMBLE,
"Clerk.

"EXHIBIT A.

"Benjamin Harrison, President of the United States of America, to all who shall see these Presents, Greeting: Know ye, that reposing special trust and confidence in the integrity, ability

and learning of Lewis E. Parsons, Jr., of Alabama, I have nominated, and by and with the advice and consent of the Senate, do appoint him Attorney of the United States in and for the Northern and Middle Districts of Alabama, and do authorize and empower him to execute and fulfill the duties of that office according to law, and to have and to hold the said office with all powers, privileges and emoluments to the same of right appertaining unto him the said Lewis E. Parsons, Jr., for the term of four years from from the day of the date hereof subject to the conditions prescribed by law.

"In testimony whereof, I have caused these letters to be made patent and the seal of the Department of Justice to be hereunto affixed.

"Given under my hand at the City of Washington, the 4th day of February in the year of our Lord one thousand, eight hundred and ninety-three and of the Independence of the United States of America the one hundred and fourteenth.

"BENJ. HARRISON.

(Seal of Dep't of Justice.)

"By the President:

"W. H. H. MILLER,

"Attorney General.

"EXHIBIT B.

"Grover Cleveland, President of the United States of America, to all who shall see these Presents, Greeting: Know ye, that reposing special trust and confidence in the integrity, ability and learning of Emmet O'Neal, of Alabama, I do appoint him to be Attorney of the United States for the Northern District of Alabama, and do authorize and empower him to execute and fulfill the duties of that office according to law; and to have and to hold the said office, with all the powers, privileges and emoluments thereto legally appertaining unto him, the said Emmet O'Neal, until the end of the next session of the Senate, and no longer; subject to the conditions prescribed by law.

"In witness whereof I have caused these letters to be made patent and the seal of the Department of Justice to be hereunto affixed.

"Given under my hand, at the City of Washington, the 26th day of May in the year of our Lord one thousand, eight hundred

and ninety-three, and of the Independence of the United States of America the one hundred and seventeenth.

"GROVER CLEEVLAND.

{Seal of Dep't of Justice.} "By the President:
"RICHARD OLNEY,
"Attorney General."

Counsel for Lewis E. Parsons, Jr., appeared in Court on the 15th day of July, 1893, and asked the Court to set the said motion down for hearing at some day during the present term of the Court. Counsel appeared for Emmet O'Neal and resisted said application, and the Court heard the argument for and against the same. Counsel for the motion urged the Court to either set a day for the hearing of the motion during the present term of the court or to allow the matter to be now submitted to the Court to be passed upon at any time during the present term which would suit the convenience of the Court, and stated to the Court that he was ready now and offered to make proof of all the statements made in the said motion, which the Court was called upon to consider. In response to this application, the Court announced that he would decline to set the case down for hearing at any time; also that he declined to entertain the motion. He did not feel satisfied that the question of the title to the office in controversy could be raised by motion, and declined to hear the motion or to pass upon it. Counsel then urged the Court to make some disposition of the motion, either by granting or refusing, or by dismissing it from the docket (whichever, in the judgment of the Court, should be done), so that it would not prejudice the right of movant to apply to the Supreme Court to review the action of this Court, in granting the original motion of Emmet O'Neal requiring the said Lewis E. Parsons, Jr., movant, to turn over the books, papers, and other property appertaining to the office of United States Attorney to the said Emmet O'Neal, by some appropriate writ. The Court again declined to take any action in regard to the motion whatever except to refuse to entertain it; and to this action of the Court, in declining to entertain the said motion and to pass upon the same now or at some future time during the term, the said Lewis E. Parsons, Jr., then and there duly excepted.

Counsel for Parsons then stated to the Court that he would withdraw the said motion from the docket, not that he did not insist on having it passed upon by the Court, but for the sole reason of preventing the continuance of the motion on the docket of this court from defeating any application which he might make on behalf of the said movant for a writ of mandamus or other appropriate writ by which he intended to have the action of this Court, in granting the original motion of Emmet O'Neal requiring the said Lewis E. Parsons, Jr., to turn over to said O'Neal, books, papers, and other property appertaining to the said office of United States District Attorney, reviewed.

Said L. E. Parson, Jr., tenders this, his bill of exceptions, and asks that it be signed and sealed by the presiding Judge before whom the said application was made, and asks that it be made a part of the record in said cause, which is accordingly done this 15th day of July, 1893.

JOHN BRUCE, [Seal.]
Judge.

[Endorsed thereon :]
Ex parte Lewis E. Parsons, Jr.
Bill of Exceptions.
Filed July 22, 1893.
N. W. TRIMBLE, CLERK.

UNITED STATES OF AMERICA,
NORTHERN DISTRICT OF ALABAMA,
SOUTHERN DIVISION.

I, N. W. TRIMBLE, Clerk of the Circuit Court of the United States of America, in and for said District, do hereby certify that the foregoing, from pages seven to thirty-one inclusive, is a true, full and complete copy of all proceedings in the United States Circuit Court for the Southern Division of the Northern District of Alabama in the controversy between Emmet O'Neal and Lewis E. Parsons, Jr., which resulted in an order of Court requiring said Parsons to turn over to the said O'Neal the books and property appertaining the United States Attorney's office for the Northern District of Alabama, as fully as the same appears of record in my office.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of said Court, at office, in the city of Birmingham, in said District this 6th day of October, 1893.

N. W. TRIMBLE,
Clerk of U. S. Circuit Court,
Northern District of Alabama.

[Seal.]

To Hon. JOHN BRUCE, Judge of the United States District Court for the Middle and Northern Districts of Alabama.

TAKE NOTICE:

That on the 23rd day of October, 1893, the foregoing motion will be made in the Supreme Court of the United States.

This the 6th day of October, 1893.

J. A. W. SMITH,
DAVID D. SHELBY,
Attorneys for motion.

UNITED STATES OF AMERICA,
NORTHERN DISTRICT OF ALABAMA.

Before me, N. W. TRIMBLE, Clerk of the United States Circuit Court for said District, personally came J. A. W. Smith, who, being duly sworn, says on oath that he handed a copy of the foregoing, motion, petition, and notice to Honorable John Bruce, the Judge of the United States District Court for the Middle and Northern Districts of Alabama.

J. A. W. SMITH.

Sworn to and subscribed before me
this 6th day of October, 1893.

N. W. TRIMBLE,
Clerk.

IN THE

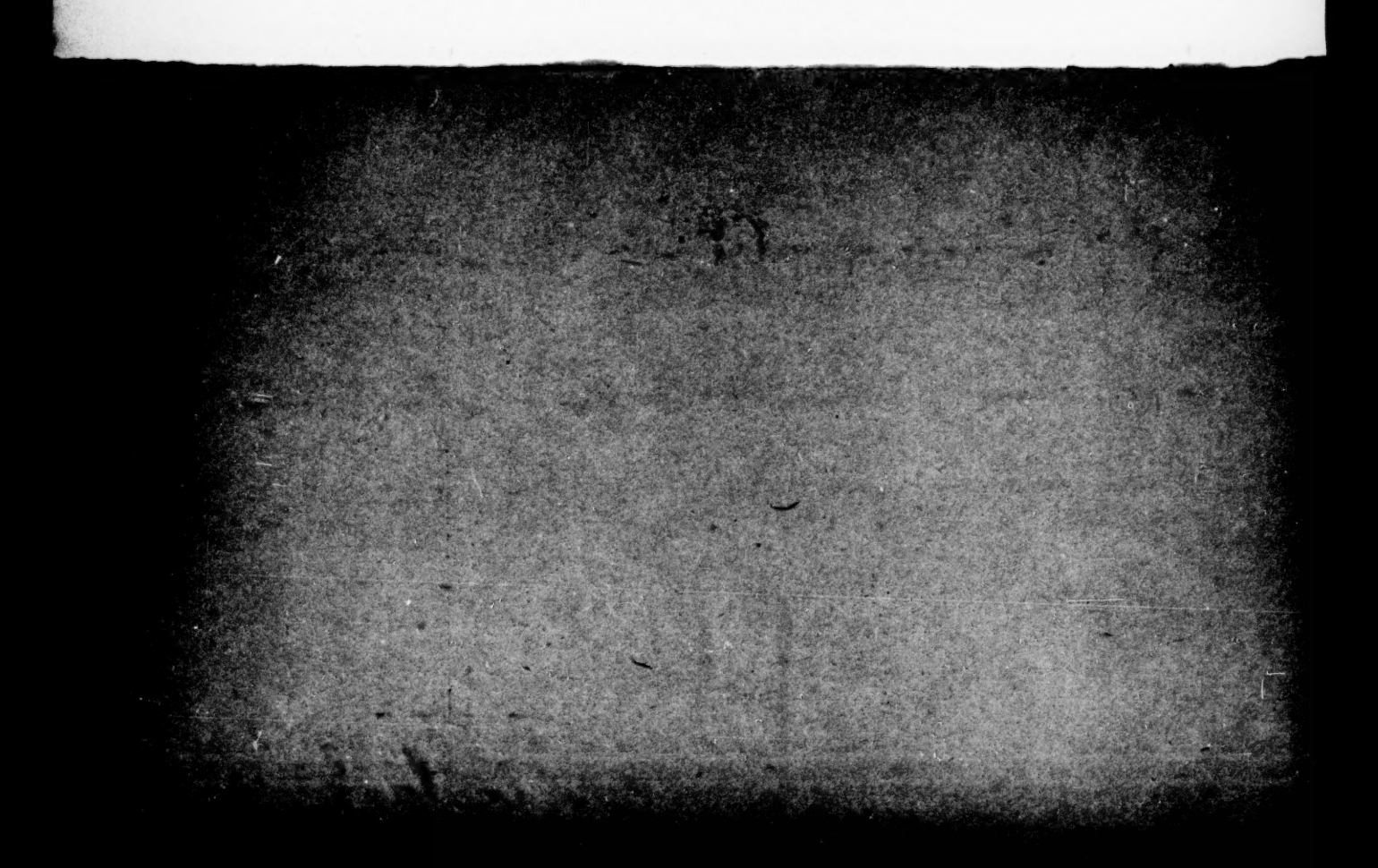
SUPREME COURT OF THE UNITED STATES.

EX PARTE A. R. NININGER.

PETITION FOR WRIT OF MANDAMUS.

J. A. W. SMITH,
DAVID D. SHELBY,
For Petitioner.

Roberts & Son, Printers, Birmingham, Ala.



IN THE

SUPREME COURT OF THE UNITED STATES.

Ex Parte Alexander R. Nininger.

PETITION FOR WRIT OF MANDAMUS.

Petitioner Alexander R. Nininger moves the Court for leave to file this petition, and for a rule requiring the Honorable John Bruce, Judge of the District Court of the United States for the Middle and Northern Districts of Alabama, and who held the term of the Circuit Court for the Southern Division of the Northern District of Alabama at which the rulings and other actions, in said petition complained of, were made and done, to show cause, if any there be, why a mandamus should not issue commanding him to vacate an order made and entered in the said Circuit Court for the Southern Division of the Northern District of Alabama, on the 20th day of June, 1893, commanding the petitioner to turn over to J. C. Musgrove the books, papers, and other *insignia* of office appertaining to the office of United States Marshal for the Northern District of Alabama, and why petitioner should not be reinstated in said office.

And also to show cause why the petitioner should not have such other and further relief in the premises as may be proper.

J. A. W. Smith,
David D. Shelby,
Attorneys for Petitioner.

To the Supreme Court of the United States:

Petitioner Alexander R. Nininger respectfully shows to the Court—

1. That on the twentieth day of March, 1890, he was appointed by the President of the United States, with the advice and consent of the Senate, United States Marshal for the Northern District of Alabama, and that within a few days thereafter he qualified as such Marshal, and has faithfully performed all the duties of said office from then until the 20th day of June, 1893.

Petitioner was appointed for a term of four years, as required by the statutes, and said term has not yet expired. Petitioner has done nothing to forfeit his right to said office; he has not resigned and has never been impeached, and has constantly resided and still resides in said district.

2. On the 26th day of May, 1893, a letter was written to petitioner, signed "Grover Cleveland," purporting to remove petitioner from the office of United States Marshal—no cause being assigned therefor, and no notice was ever given to petitioner of any accusation against him.

3. On the 20th day of June, 1893, J. C. Musgrove appeared in the United States Circuit Court for the Southern Division of the Northern District of Alabama, the Honorable John Bruce, the District Judge, being present and holding said term of said Court, and presented to the Court a commission or letter of appointment signed by the President of the United States, purporting to authorize the said J. C. Musgrove to perform the duties of the office of United States Marshal for said district "until the end of the next session of the Senate of the United States and no longer," and requested the Court to recognize him as such United States Marshal. Petitioner also appeared before

said Court at the same time, demanding the recognition of the Court as the Marshal of said District, and submitted to the Court his commission as such officer, and, further, offered to prove that no vacancy existed in said office at the date of the issuance of the commission to Musgrove as aforesaid or at any time since petitioner's appointment as aforesaid.

4. The Court recognized said J. C. Musgrove as the Marshal of the United States; whereupon petitioner again declined to turn over to him the books, papers, and other property appertaining to the said office, which had been previously demanded and refused. Whereupon the said Court made an order, upon the motion of said J. C. Musgrove, commanding petitioner to turn over to the said Musgrove all the books, papers, and other property appertaining to said office to the said Musgrove, and, in obedience to which, petitioner turned over the said property to said Musgrove, and since which time the said Musgrove has been in possession of and performing all the duties of said office.

5. That on June 21st, 1893, petitioner again appeared in the said Circuit Court and moved the Court to vacate the said order requiring him to turn over to Musgrove the books, papers, etc., appertaining to the said office and to reinstate petitioner in office, which said motion was called to the attention of the Court, but the Court refused to pass upon the same; whereupon petitioner, still insisting upon his right to the said office, withdrew the said motion, that its pendency would not embarrass him in an effort to have the action of the said Circuit Court reviewed by this Court.

Wherefore petitioner prays that a writ of mandamus issue by this honorable Court, commanding the said John Bruce, as Judge of the Circuit Court for the Northern and Middle Districts of Alabama, to vacate the said order of said Court commanding petitioner to turn over to said J. C. Musgrove the books, papers, and property appertaining to the office of United States Marshal for said Northern District of Alabama, and to reinstate petitioner

in said office. And petitioner prays for such other and further relief as may be proper.

In support of this petition reference is made to the certified copy of the record of the lower Court in regard to this matter herewith filed.

J. A. W. Smith,
David D. Shelby,
Att'ys for Petitioner.

Alexander R. Nininger, being duly sworn, says on oath that the statements made in the foregoing petition are true.

Alexander R. Nininger.

Sworn to and subscribed before me this 6th day of October, 1893.

N. W. Trimble,
Clerk U. S. Circuit Court for Northern District of Alabama.

TRANSCRIPT OF RECORD.

IN RE. UNITED STATES MARSHAL'S OFFICE FOR NORTHERN DISTRICT OF ALABAMA.

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THE UNITED STATES OF AMERICA,

NORTHERN DISTRICT OF ALABAMA, SOUTHERN DIVISION.

Pleas had at a regular term of the Circuit Court of the United States of America for the Southern Division of the Northern District of Alabama, begun and held at the United States Court House in the city of Birmingham, in said district, on the first Monday of March, it being the sixth day thereof, in the year of our Lord one thousand eight hundred and ninety-three, and of the independence of the United States the one hundred and seventeenth year. Present: The Honorable John Bruce, Judge of the District Court of the Courts of the United States for the Middle and Northern Districts of Alabama, presiding.

In the United States Circuit Court for the Southern Division of the Northern District of the State of Alabama.

To the Honorable Judges of said Court:

Now comes J. C. Musgrove, who has been heretofore regularly appointed and qualified as United States Marshal for the Northern District of the State of Alabama, and who has been by this Court, at the present term, duly recognized as such Marshal, and makes known to the Court that he has demanded of Alexandar R. Nininger, the former Marshal of said District, the possession and custody of the books, papers, and property belonging to the said office and now in his possession, as well as the custody of the prisoners of the United States now under his control, and that the said Nininger has refused to deliver to him such property, books and papers and prisoners.

Wherefore the said J. C. Musgrove, as Marshal as aforesaid, respectfully moves the Court for an order requiring the said Nininger to turn over to and deliver into the possession of him,

the said Musgrove, all such property, books, and papers, and also the custody of said prisoners.

J. C. MUSGROVE,
U. S. Marshal.

LONDON & TILLMAN,
his Attorneys.

Received notice this June 20, 1893.

SMITH & LOWE and
D. D. SHELBY,
Atty's for A. R. Nininger.

[Endorsed thereon:]

A In re Musgrove.
Motion for Nininger to turn over books and papers of office of Marshal.
Filed June 20, 1893.
N. W. TRIMBLE, Clerk.

In the Circuit Court of the United States for Southern Division of the Northern District of Alabama.

In the matter of the motion of J. C. Musgrove.

The said Alexander R. Nininger demurs to the said motion, and, as grounds of demurrer, assigns the following:

1. The Constitution of the United States does not confer on the President of the United States the authority to remove said Nininger from the said office of United States Marshal and to appoint said Musgrove.

2. The Constitution and laws of the United States do not confer on the President the authority to remove said Nininger from said office and to appoint said Musgrove.

3. The Constitution does not confer on the President the power to remove said Nininger from said office and to appoint said Musgrove thereto during a recess of the Senate.

4. The Court has no jurisdiction to make the order prayed for in the motion.

5. There are no pleadings, or papers, or suit, or due process of law to authorize the order prayed for in the motion.

6. That the said Court had no jurisdiction or authority to recognize the said J. C. Musgrove as stated in said motion and

that there were no pleadings, suit, or due process of law to authorize the said Court to recognize the said J. C. Musgrove as United States Marshal in said motion.

SMITH & LOWE and
D. D. SHELBY,
Atty's for Alexander R. Nininger.

[Endorsed thereon:]
Nininger's demurrer to O'Neal's motion.
Filed June 20, 1893.
N. W. TRIMBLE, Clerk.

In the Circuit Court of the United States for the Southern Division of the Northern District of Alabama.

In the matter of the motion of J. C. Musgrove to require A. R. Nininger to turn over to him, as United States Marshal of the Northern District of Alabama, the books and other property in his possession belonging to the United States and the United States prisoners in his possession.

Comes said Alexander Ramsey Nininger in his own proper person and by counsel, and, his demurrer having been overruled by the Court, for answer to said motion, says:

First. Respondent was duly appointed and commissioned by the President, with the advice and consent of the Senate, United States Marshal for the Northern District of Alabama, on the 20th day of March, 1890, and his said commission authorizes him to perform the duties of said office for the term of four years.

Second. A few days after the date of said commission, respondent qualified and entered upon the duties of said office and has performed the duties of said office up till the present time.

Third. Respondent has never resigned said office, and he now resides in the said District and has so resided since his said appointment, and has given his personal attention to the duties of said office, and no cause of vacancy now exists or has existed since his appointment to said office.

Fourth. That respondent has performed the duties of said office in strict accordance with law.

Fifth. Shortly after its date respondent received the following communication, to-wit:

"EXECUTIVE MANSION,

"WASHINGTON, D. C., May 26, 1893.

"SIR—You are hereby removed from the office of Marshal for the Northern District of Alabama, to take effect upon the appointment and qualification of your successor.

"GROVER CLEVELAND.

"To A. R. Nininger, Huntsville, Ala."

Sixth. Respondent had no notice of any charge having been preferred against him prior to the receipt of the said communication.

Seventh. Respondent replied to said communication, addressing his reply, however, to the Attorney General, declining to surrender said office and denying the President's right to remove respondent, which said reply was duly posted to the Attorney General.

Eighth. Subsequently, when movant demanded possession of said office and the books and papers and property belonging to United States pertaining to said office respondent declined to surrender the same.

Ninth. Respondent has continued in possession of said office and of the books and papers belonging thereto from the time he entered on the duties of said office, in 1890, up till the present time; and now here in open court offers to perform the duties of said office. That the said Musgrove was never recognized as United States Marshal by this Court until yesterday, and that such recognition was without any suit for said office or for said purpose. Respondent alleges that said J. C. Musgrove is not the United States Marshal of said District, and that said recognition does not entitle him to said office.

SMITH & LOWE and
D. D. SHELBY,
Att'ys for Respondent, A. R. Nininger.

[Endorsed thereon:]
Answer of A. R. Nininger.
Filed June 20, 1893.
N. W. TRIMBLE, Clerk.

Now comes J. C. Musgrove, Marshal of the United States for the Northern District of Alabama, and represents and shows to the Court that he has demanded of Alexander R. Nininger, the former Marshal of said District, the possession and custody of the books, papers, and property to the said office, and that the said Nininger has refused to surrender the same; and he also represents and shows to the Court that the said Nininger has also refused to surrender the custody of the prisoners of the United States now in his possession or under his control; and the said Musgrove now moves the Court for an order to require the said Nininger to surrender and turn over to him the possession and custody of the said books, papers, and property and the custody and control of said prisoners.

And counsel for the respective parties being heard, it is considered by the Court that the said Alexander R. Nininger, the former Marshal, forthwith, or as soon as practicable, turn over and deliver to the said J. C. Musgrove, as Marshal of the Northern District of Alabama, all the books, papers, and property pertaining or belonging to the said office of Marshal for the said Northern District, taking the receipt of the said Marshal therefor. And it is further considered by the Court that the said Nininger do forthwith turn over to the custody of the said J. C. Musgrove, as Marshal as aforesaid, all the prisoners who are now in his custody or under his control. The Sheriffs of the respective counties where the said prisoners are now confined are hereby required, upon the demand of the said J. C. Musgrove, to deliver to him the custody of the prisoners of the United States now in their respective jails.

[Signed] JOHN BRUCE, Judge.

Whereupon A. R. Nininger, by his counsel, duly excepted to the foregoing ruling and order, and filed his bill of exceptions.

In the Circuit Court of the United States for the Northern District of Alabama, Southern Division.

In the matter of the motion of J. C. Musgrove.

Be it remembered that the following proceedings were had on the 20th of June, 1893, in said court at a term thereof, to-wit:

J. C. Musgrove appeared in court and moved the Court as follows:

"In the United States Circuit Court for the Southern Division of the Northern District of the State of Alabama.

"To the Honorable Judges of said Court:

"Now comes J. C. Musgrove, who has been heretofore regularly appointed and qualified as United States Marshal for the Northern District of the State of Alabama, and who has been by this Court, at the present term, duly recognized as such Marshal, and makes known to the Court that he has demanded of Alexander R. Nininger, the former Marshal of said District, the possession and custody of the books, papers, and property belonging to the said office and now in his possession, as well as the custody of the prisoners of the United States now under his control, and that the said Nininger has refused to deliver to him such property, books, and papers, and prisoners.

"Wherefore the said J. C. Musgrove, as Marshal as aforesaid, respectfully moves the Court for an order requiring the said Nininger to turn over and deliver into the possession of him, the said Musgrove, all such property, books, and papers, and also the custody of said prisoners.

"J. C. Musgrove,
"U. S. Marshal.

"London & Tillman,
"his Attorneys.

[Endorsed:]

"Filed June 20, 1893.
"N. W. Trimble, Clerk."

Notice of said motion was duly given to said A. R. Nininger, who by counsel acknowledged notice thereof as follows:

"Rec'd notice this June 20, 1893.

"Smith & Lowe and
"D. D. Shelby,
"Attorneys for A. R. Nininger."

And the said A. R. Nininger filed in court a demurrer to the said motion in words as follows:

"In the Circuit Court of the United States, Southern Division of the Northern District of Alabama.

"In the matter of the motion of J. C. Musgrove.

"The said Alexander Ramsey Nininger demurs to the said motion, and as grounds of demurrer assigns the following:

"1. The Constitution of the United States does not confer on the President of the United States the authority to remove said Nininger from the office of United States Marshal and to appoint said Musgrove.

"2. The Constitution and laws of the United States do not confer on the President the authority to remove said Nininger from said office and to appoint said Musgrove.

"3. The Constitution does not confer on the President the power to remove said Nininger from said office and to appoint said Musgrove thereto during a recess of the Senate.

"4. The Court has no jurisdiction to make the order prayed for in the motion.

"5. There are no pleadings, or papers, or suit, or due process of law to authorize the order prayed for in the motion.

"6. That the said Court had no jurisdiction or authority to recognize the said Musgrove as stated in said motion; and that there were no pleadings, suit, or due process of law to authorize the Court to recognize the said Musgrove as Marshal, as stated in said motion.

"SMITH & LOWE and
"D. D. SHELBY,
"Att'ys for Alexander R. Nininger."

[Endorsed.]

"Filed June 20, 1893.
"N. W. TRIMBLE, Clerk.

The Court having overruled the said demurer, the said A. R. Nininger duly excepted to the ruling of the Court in overruling the demurrer, and then he filed his answer in words and figures as follows:

"In the Circuit Court of the United States for the Southern Division of the Northern District of Alabama.

"In the matter of the motion of J. C. Musgrove to require A. R. Nininger to turn over to him, as United States Marshal of the Northern District of Alabama, the books and other property in his possession belonging to the United States, and the United States prisoners in his possession.

"Comes said Alexander Ramsey Nininger, in his own person and by counsel, and, his demurrer having been overruled by the Court, for answer to the said motion, says:

"First. Respondent was duly appointed and commissioned by the President, with the advice and consent of the Senate, United States Marshal for the Northern District of Alabama, on the 20th day of March, 1890, and his said commission authorizes him to perform the duties of said office for the term of four years.

"Second. A few days after the date of said commission, respondent qualified and entered upon the duties of said office, and has performed the duties of said office up till the present time.

"Third. Respondent has never resigned said office, and he now resides in the said District and had so resided since his said appointment, and has given his personal attention to the duties of said office, and no cause of vacancy now exists or has existed since his appointment to said office.

"Fourth. That respondent has performed the duties of said office in strict accordance with law.

"Fifth. Shortly after its date, respondent received the following communication, to-wit:

"'EXECUTIVE MANSION,

"'WASHINGTON, D. C., May 26, 1893.

"'SIR—You are hereby removed from the office of Marshal for the Northern District of Alabama, to take effect upon the appointment and qualification of your successor.

"'GROVER CLEVELAND.

"'To A. R. Nininger, Huntsville, Ala.'"

"Sixth. Respondent had no notice of any charge having been preferred against him prior to the receipt of said communication.

"Seventh. Respondent replied to said communication, addressing his reply, however, to the Attorney General, declining to surrender said office and denying the President's right to

remove respondent, which said reply was duly posted to the Attorney General.

"Eighth. Subsequently, when movant demanded possession of said office and the books and papers and property belonging to the United States pertaining to said office, respondent declined to surrender the same.

"Respondent has continued in possession of said office and the books and papers belonging thereto from the time he entered on the duties of said office, in 1890, up till the present time; and now here in open court offers to perform the duties of said office. That said Musgrove was never recognized as United States Marshal by this Court until yesterday, and that such recognition was without any suit for said office or for said purpose. Respondent alleges that said J. C. Musgrove is not United States Marshal of said District, and that said recognition does not entitle him to said office.

"SMITH & LOWE and
"D. D. SHELBY,
"Att'ys for A. R. Nininger."

[Endorsed:]

"Filed June 20, 1893.
"N. W. TRIMBLE, Clerk."

The said A. R. Nininger then read in evidence his commission, which is dated March 20, 1890, and is in these words:

"BENJAMIN HARRISON,
"President of the United States of America,
"To all who see these presents, greeting:

"Know ye, that, reposing special trust and confidence in the integrity, ability, and diligence of Alexander Ramsey Nininger, of Alabama, I have nominated, and, by and with the advice and consent of the Senate, do hereby appoint him Marshal of the United States in and for the Northern District of Alabama, and do authorize and empower him to execute and fulfill the duties of that office according to law, and to have and to hold the said office, with all the powers, privileges, and emoluments to the same of right appertaining unto him, the said Alexander Ramsey Nininger, for the term of four years from the date hereof, subject to the conditions prescribed by law.

"In testimony whereof, to be made patent and the seal of the Department of Justice to be hereunto affixed.

"Given under my hand, at the City of Washington, the 20th day of March in the year of our Lord one thousand eight hundred and ninety, and of the Independence of the United States of America the one hundred and fourteenth.

"BENJ. HARRISON.

Seal of Departm'nt of Justice. "By the President.

"W. H. H. MILLER,

"Attorney General."

The said A. R. Nininger was then sworn as a witness and testified that, on the seventh of April, 1890, he qualified and gave bond as United States Marshal for the Northern District of Alabama, and that he has continuously resided in said District and acted as Marshal up to this date; that he has not resigned said office; that he had no notice of any charges against him before he received said letter, signed "Grover Cleveland;" that he has faithfully and continuously performed the duties of said office: that on the opening of the said court on June 19, 1893, and also on June 20, 1893, he was present in court, offering to perform the duties of said office and protesting and objecting to the recognition by the Court of said J. C. Musgrove as United States Marshal; that the letter signed "Grover Cleveland" was received by witness a few days after its date; that, after its receipt, witness wrote and posted a letter to the Attorney General of the United States, in which he declined to surrender the office; J. C. Musgrove demanded of witness, a few days after witness received said letter signed "Grover Cleveland," the said office of Marshal, the books and papers and property belonging to said office, and witness refused to surrender the same and still holds the same; the said Musgrove claimed to have been appointed to said office by President Cleveland on or about May 26, 1893.

J. C. Musgrove presented to the Court his commission (a copy of which is made Exhibit A hereto) and showed that he had been duly qualified under it.

This was all the evidence.

The Court granted the motion, and said A. R. Nininger duly excepted:

The Court thereupon made and entered the following order or judgment, to-wit:

"Now comes J. C. Musgrove, Marshal of the United States for the Northern District of Alabama, and represents and shows to the Court that he has demanded of Alexander R. Nininger, the former Marshal of said District, the possession and custody of the books, papers, and property belonging to the said office, and that the said Nininger has refused to surrender the same; and he also represents and shows to the Court that the said Nininger has also refused to surrender the custody of the prisoners of the United States now in his possession or under his control; and the said Musgrove now moves the Court for an order to require the said Nininger to surrender and turn over to him the possession and custody of the said books, papers, and property and the custody and control of the said prisoners; and counsel for the respective parties being heard:

"It is considered by the Court that the said Alexander R. Nininger, the former Marshal, do forthwith, or as soon as practicable, turn over and deliver to the said J. C. Musgrove, as Marshal of the Northern District of Alabama, all the books, papers, and property pertaining to or belonging to the said office of Marshal for the said Northern District, taking the receipt of the said Marshal therefor.

"And it is further considered by the Court that the said Nininger do forthwith turn over to the custody of the said J. C. Musgrove, as Marshal as aforesaid, all the prisoners who are now in his custody or under his control.

"The Sheriffs of the respective counties where the said prisoners are now confined are hereby required, upon the demand of the said J. C. Musgrove, to deliver to him the custody of the prisoners of the United States now confined in their respective jails.

"JOHN BRUCE, Judge."

"And to the making of the said order or judgment above set out the said A. R. Nininger duly excepted, and now presents this,

his Bill of Exceptions, to the said Court, the Honorable John Bruce, Judge, presiding, which is signed and sealed in open court this 20th day of June, Anno Domino 1893.

"JOHN BRUCE, [Seal.]
"Judge."

EXHIBIT A.

(Copy.)

GROVER CLEVELAND,

President of the United States of America,

To all who shall see these presents, greeting:

Know ye, That, reposing special trust and confidence in the integrity, ability, and learning of Judge Coleman Musgrove, of Alabama, I do appoint him to be Marshal of the United States for the Northern District of Alabama, and do authorize and empower him to execute and fulfill the duties of that office according to law; and to have and to hold said office, with all the powers, privileges, and emoluments thereunto legally appertaining, unto the said Judge Coleman Musgrove until the end of the next session of the Senate of the United States and no longer; subject to the conditions prescribed by law.

In witness whereof, I have caused these letters to be made patent and the seal of the Department of Justice to be hereunto affixed.

"Given under my hand, at the City of Washington, the 26th day of May in the year of our Lord one thousand eight hundred and ninety-three, and of the Independence of the United States of America the one hundred and seventeenth.

"GROVER CLEVELAND.

(Seal of Department of Justice.)

"By the President.
"RICHARD OLNEY,
"Attorney General."

[Endorsed thereon:]

Bill of Exceptions.
Filed June 20, 1893.
N. W. TRIMBLE, Clerk.

"In the Circuit Court of the United States for the Northern District of Alabama, Southern Division:

"To the Honorable the Judges of the said Court:

"Your petitioner and movant, Alexander R. Nininger, respectfully shows to the Court:

"That on the 20th day of March, 1890, he was appointed by the President, by and with the consent of the Senate, United States Marshal for the Northern District of Alabama, and that on the 7th day of April, 1890, he qualified and gave bond as such Marshal, and has performed all the duties of said office from that day till the 20th day of June, 1893. A copy of petitioner's commission is made Exhibit A to this petition and motion, and a part thereof. Petitioner was appointed for the term of four years, as required by the statute of the United States, and said term has not yet expired. Petitioner has done nothing to forfeit his right to said office; he has not resigned and has not been impeached, and has continuously resided and now resides in said district. Petitioner has faithfully performed the duties of said office since his appointment and qualification. On the 26th day of May, 1893, a letter was written to petitioner and received by him, signed 'Grover Cleveland,' purporting to remove him from the office of United States Marshal. On the 20th day of June, 1893, J. C. Musgrove appeared in court and presented to the Court a commission or letter of appointment signed by the President of the United States, nominating the said J. C. Musgrove to said office of United States Marshal. By authority of said paper the said J. C. Musgrove had previously demanded of petitioner the books, papers and prisoners appertaining to the office of United States Marshal, but petitioner continued to hold and refused to surrender the same. The said commission or paper held by said J. C. Musgrove was on its face apparently valid and operative, and being presented to the Court, but without suit or other proceedings in Court instituted for the purpose of testing the question of title to said office, or the question of the validity or invality of said commission or paper, the Court recognized the said J. C. Musgrove as United States Marshal for said District, and thereafter on, to-wit: the 20th day of June, 1893, upon

the motion of said Musgrove, the Court made an order directing petitioner to turn over to said Musgrove the books, papers, and prisoners of the United States appertaining to said office. In obedience to said order petitioner has turned over to said Musgrove the property therein mentioned, since which time said Musgrove has been in possession of said office of United States Marshal, performing the duties thereof. A copy of the commission or letter of appointment to J. C. Musgrove is made Exhibit B to this petition. Petitioner alleges that said commission, shown by Exhibit B, was issued without the advice and consent of the Senate, and that at its date there was no vacancy in the said office of United States Marshal; that it was issued during a recess of the Senate; that the President has attempted by his said action to create and fill a vacancy in said office during a recess of the Senate, and contrary to law. Petitioner has no remedy in this Court except by this petition. Petitioner's said commission, now presented to this Court as a part of this petition, is valid and unexpired, and on the facts as stated the said commission of said J. C. Musgrove is invalid and void—although in its form, terms. and execution it is apparently *prima facie* valid. The statutes of the United States did not authorize, but, on the contrary. forbade its issuance on the facts stated. The Constitution of the United States does not confer the right on the President to issue said commission on the facts herein stated.

"Petitioner prays and moves that the Court make an order and enter a judgment declaring the commission or letter of appointment issued to said J. C. Musgrove to be invalid, and issued without authority of law; and that petitioner be put in possession of the said papers, property, and prisoners and that said order of Court of date June 20th, 1893, be set aside, and that petitioner be permitted to perform the duties of said office until the expiration of his term fixed by law and by his said commission.

"Petitioner prays that J. C. Musgrove be given due and proper notice of this petition and motion.

"SMITH & LOWE.
"D. D. SHELBY,
"Attorneys for Petioner and Movant.

"Personally appeared before me, N. W. Trimble, Clerk of

said Court, Alexander R. Nininger, who, being duly sworn, deposes and says that the statements in the foregoing petition and motion are true.

"ALEXANDER RAMSEY NININGER.

"Sworn to subscribed before me this 21st day of June, 1893.

"N. W. TRIMBLE, Clerk.

"EXHIBIT A.

"BENJAMIN HARRISON,

"President of the United States of America,

"To all who shall see these presents, greeting:

"Know ye, that, reposing special trust and confidence in the integrity, ability and learning of Alexander Ramsey Nininger, of Alabama, I have nominated, and by and with the advice and consent of the Senate, do appoint him Marshal of the United States in and for the Northern District of Alabama, and do authorize and empower him to execute and fulfill the duties of that office according to law, and to have and to hold the said office with all the powers, privileges and emoluments to the same of right appertaining unto him, the said Alexander Ramsey Nininger, for the term of four years from the day of the date hereof, subject to the conditions prescribed by law.

"In testimony whereof, I have caused these letters to be made patent and the seal of the Department of Justice the be hereunto affixed.

"Given under my hand at the City of Washington, on the 20th day of March, in the year of our Lord one thousand eight hundred and ninety, and of the independence of the United States of America the one hundred and fourteenth.

"BENJ. HARRISON.

Seal of Dep't of Justice.

"By the President,

"W. H. H. MILLER,

"Attorney General.

"EXHIBIT B.

"GROVER CLEVELAND,

"President of the United States of America,

"To all who shall see these presents, greeting:

"Know ye, that, reposing special trust and confidence in the

integrity, ability, and learning of Judge Coleman Musgrove, of Alabama, I do appoint him to be Marshal of the United States for the Northern District of Alabama, and do authorize and empower him to execute and fulfill the duties of that office according to law; and to have and to hold the said office, with all the powers, privileges and emoluments thereunto legally appertaining, unto him, the said Judge Coleman Musgrove, until the end of the next session of the Senate of the United States and no longer; subject to the conditions prescribed by law.

"In witness whereof I have caused these letters to be made patent and the seal of the Department of Justice to be hereunto affixed.

"Given under my hand at the City of Washington, the 26th day of May in the year of our Lord one thousand eight hundred and ninety-three, and of the Independence of the United States of America, 117th.

"GROVER CLEVELAND.

{Seal of Dep't of Justice.} "By the President:
"RICHARD OLNEY,
"Attorney General."

[Endorsed thereon:]
"Petition and motion of A. R. Nininger.
"Filed June 21, 1893.
"N. W. TRIMBLE, Clerk."

In the matter of the office of U. S. Attorney.

Comes A. R. Nininger, by his counsel, and moves the Court to set down for hearing his petition and motion to vacate and set aside the order made on a former day of this term, requiring and directing him to turn over to J. C. Musgrove the books, papers, etc., in the United States Marshal's office, and, after hearing counsel for both sides, the Court declined to set said petition and motion down for hearing and refused to entertain the same. Thereupon said A. R. Nininger, by his counsel, duly excepted to said refusal on the part of the Court and insisted upon said petition and motion being heard, and offered to prove the facts stated therein.

Be it remembered, that in the United States Circuit Court for the Southern Division of the Northern District of Alabama, on to-wit: the 16th day of July, 1893, the Honorable John Bruce, District Judge, present and presiding, in the matter of the motion of Alexander R. Nininger filed in said court, on the 21st day of June, 1893, the following proceedings were had, to-wit:

The said motion was called to the attention of the Court and is in words and figures, following:

"In the Circuit Court of the United States for the Northern District of Alabama, Southern Division:

"To the Honorable the Judge of the said Court:

"Your petitioner and movant, Alexander Ramsey Nininger respectfully shows to the Court:

"That on the 20th day of March, 1890, he was appointed by the President, by and with the advice and consent of the Senate, United States Marshal for the Northern District of Alabama, and on the 4th day of April, 1890, he qualified and gave bond as such Marshal, and has performed all the duties of said office from that day till the 20th day of June, 1893. A copy of petitioner's commission is made Exhibit A to this petition and motion and a part thereof. Petitioner was appointed for the term of four years as required by the statutes of the United States, and said term has not yet expired. Petitioner has done nothing to forfeit his right to said office; he has not resigned and has never been impeached, and has continuously resided and now resides in said District. Petitioner has faithfully performed the duties of said office since his appointment and qualification. On the 26th day of May, 1893, a letter was written to petitioner and received by him, signed 'Grover Cleveland,' purporting to remove him from the office of United States Marshal. On the 20th day of June, 1893, J. C. Musgrove appeared in court and presented to the Court a commission or letter of appointment signed by the President of the United States nominating the said J. C. Musgrove to said office of United States Marshal. By authority of said paper the said J. C. Musgrove had previously demanded of petitioner the books, papers, and prisoners appertaining to the office of United States Marshal, but petitioner continued to hold

and refused to surrender the same. The said commission or paper held by said J. C. Musgrove was on its face apparently valid and operative, and being presented to the Court --but without suit or other proceeding in court instituted for the purpose of testing the question of title to said office, or the question of validity or invalidity of said commission or paper, the Court recognized the said J. C. Musgrove as United States Marshal for said District, and thereafter on, to-wit: the 20th day of June, 1893, upon the motion of said Musgrove, the Court made an order directing petitioner to turn over to said Musgrove the books, papers and prisoners of the United States appertaining to said office. In obedience to said order, petitioner has turned over to said Musgrove the property therein mentioned, since which time said J. C. Musgrove has been in possession of said office of United States Marshal, performing the duties thereof. The copy of the commission or letter of appointment to J. C. Musgrove is made Exhibit B and a part of this petition. Petitioner alleges that said commission, shown by Exhibit B, was issued without the advice and consent of the Senate, and that at its date there was no vacancy in the said office of the United States Marshal for the Northern District of Alabama; that it was issued during a recess of the Senate; that the President has attempted by his said action to create and fill a vacancy in said office during a recess of the Senate, and contrary to law. Petitioner has no remedy in this Court except by this petition. Petitioner's said commission, now presented to this Court as a part of this petition, is valid and unexpired, and on the facts as stated the said commission of said J. C. Musgrove is invalid and void—although in its form, terms and execution it is apparently and *prima facie* valid. The statutes of the United States did not authorize, but on the contrary forbade its issuance on the facts stated. The Constitution of the United States does not confer the right on the President to issue said commission on the facts herein stated.

" Petitioner prays and moves that the Court make an order and enter a judgment declaring or letter of appointment issued to said J. C. Musgrove to be invalid, and issued without authority of law; and that petitioner be put in possession of the said papers, property, and prisoners, and that said order of Court

date June 20th, 1893, be set aside, and that petitioner be permitted to perform the duties of said office until the expiration of his term, fixed by law and by his said commission.

"Petitioner prays that J. C. Musgrove be given due and proper notice of this petition and motion.

"SMITH & LOWE,
"D. D. SHELBY,
"Attorneys for Petitioner and Movant.

"Personally appeared before me, N. W. Trimble, Clerk of said Court, Alexander R. Nininger, who, being duly sworn, deposes and says that the statements contained in the foregoing petition and motion are true.

"ALEXANDER R. NININGER.

"Sworn to and subscribed before me this 21st day of June, 1893.

"[Signed.] N. W. TRIMBLE,
"Clerk.

"EXHIBIT A.

"BENJAMIN HARRISON,
"President of the United States of America,
"To all who shall see these presents, greeting:

"Know ye, that, reposing special trust and confidence in the integrity, ability, and learning of Alexander Ramsey Nininger, of of Alabama, I have nominated, and by and with the advice and consent of the Senate, do appoint him Marshal of the United States in and for the Northern District of Alabama, and do authorize and empower him to execute and fulfill the duties of that office according to law, and to have and to hold the said office, with all powers, privileges, and emoluments to the same of right appertaining unto him, the said Alexander Ramsey Nininger, for the term of four years from from the day of the date hereof, subject to the conditions prescribed by law.

"In testimony whereof, I have caused these letters to be made patent and the seal of the Department of Justice to be hereunto affixed.

"Given under my hand at the City of Washington, the 20th day of March, in the year of our Lord one thousand eight hun-

dred and ninety-three and of the Independence of the United States of America the one hundred and fourteenth.

"BENJ. HARRISON.

{Seal of Dep't of Justice.} "By the President.
"W. H. H. MILLER,
"Attorney General.

"EXHIBIT B.

"GROVER CLEVELAND,

"President of the United States of America,

"To all who shall see these presents, greeting:

"Know ye, that, reposing special trust and confidence in the integrity, ability, and learning of J. C. Musgrove, of Alabama, I do appoint him to be Marshal of the United States for the Northern District of Alabama, and do authorize and empower him to execute and fulfill the duties of that office according to law; and to have and to hold the said office, with all the powers, privileges and emoluments thereto legally appertaining unto him, the said J. C. Musgrove, until the end of the next session of the Senate, ard no longer; subject to the conditions prescribed by law.

"In witness whereof I have caused these letters to be made patent and the seal of the Department of Justice to be hereunto affixed.

"Given under my hand, at the City of Washington, the 26th day of May in the year of our Lord one thousand eight hundred and ninety-three, and of the Independence of the United States of America the one hundred and seventeenth.

"GROVER CLEEVLAND.

{Seal of Dep't of Justice.} "By the President.
"RICHARD OLNEY,
"Attorney General."

Counsel for Alexander R. Nininger appeared in court on the 15th day of July, 1893, and asked the Court to set the said motion down for hearing at some day during the present term of the Court. Counsel appeared for J. C. Musgrove and resisted said application, and the Court heard the argument for and against the same. Counsel for the motion urged the Court to either set a day for the hearing of the motion during the present

term of the court or to allow the matter to be now submitted to the Court to be passed upon at any time during the present term which would suit the convenience of the Court, and stated to the Court that he was ready now and offered to make proof of all the statements made in the said motion, which the Court was called upon to consider. In response to this application, the Court announced that he would decline to set the case down for hearing at any time; also that he declined to entertain the motion. He did not feel satisfied that the question of the title to the office in controversy could be raised by motion, and declined to hear the motion or to pass upon it. Counsel then urged the Court to make some disposition of the motion, either by granting or refusing, or by dismissing it from the docket (whichever, in the judgment of the Court, should be done), so that it would not prejudice the right of movant to apply to the Supreme Court to review the action of this Court, in granting the original motion of J. C. Musgrove, requiring the said Alexander R. Nininger, movant, to turn over the books, papers, and other property appertaining to the office of United States Marshal to the said J. C. Musgrove, by some appropriate writ. The Court again declined to take any action in regard to the motion whatever except to refuse to entertain it; and to this action of the Court, in declining to entertain the said motion and to pass upon the same now or at some future time during the term, the said Alexander R. Nininger then and there duly excepted.

Counsel for Nininger then stated to the Court that he would withdraw the said motion from the docket, not that he did not insist on having it passed upon by the Court, but for the sole reason of preventing the continuance of the motion on the docket of this Court from defeating any application which he might make on behalf of the said movant for a writ of mandamus or other appropriate writ by which he intended to have the action of this Court, in granting the original motion of J. C. Musgrove requiring the said Alexander R. Nininger to turn over to said Musgrove books, papers, and other property appertaining to the said office of United States Marshal, reviewed.

Said Alexander R. Nininger tenders this, his Bill of Exceptions, and asks that it be signed and sealed by the presiding Judge before whom the said application was made, and asks that it be made a part of the record in said cause, which is accordingly done this 15th day of July, 1893.

JOHN BRUCE, [Seal.]
Judge.

[Endorsed thereon :]

Ex parte Alexander R. Nininger.
Bill of Exceptions.
Filed July 22, 1893.
N. W. TRIMBLE, CLERK.

UNITED STATES OF AMERICA,
NORTHERN DISTRICT OF ALABAMA,
SOUTHERN DIVISION.

I, N. W. TRIMBLE, Clerk of the Circuit Court of the United States of America, in and for said District, do hereby certify that the foregoing, from pages seven to twenty-eight inclusive, is a true, full and complete copy of all proceedings in the United States Circuit Court for the Southern Division of the Northern District of Alabama in the controversy between J. C. Musgrove and Alexander R. Nininger, which resulted in an order of Court requiring said Nininger to turn over to the said Musgrove the books and property appertaining the United States Marshal's office for the Northern District of Alabama, as fully as the same appears of record in my office.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of said Court, at office, in the city of Birmingham, in said District this 6th day of October, 1893.

N. W. TRIMBLE,
Clerk of U. S. Circuit Court,
Northern District of Alabama.

[Seal.]

To Hon. JOHN BRUCE, Judge of the United States District Court for the Middle and Northern Districts of Alabama.

TAKE NOTICE:

That on the 23rd day of October, 1893, the foregoing motion will be made in the Supreme Court of the United States.

This the 6th day of October, 1893.

J. A. W. SMITH,
DAVID D. SHELBY,
Attorneys for motion.

UNITED STATES OF AMERICA,
NORTHERN DISTRICT OF ALABAMA.

Before me, N. W. TRIMBLE, Clerk of the United States Circuit Court for said District, personally came J. A. W. Smith, who, being duly sworn says on oath that he handed a copy of the foregoing, motion, petition, and notice to Honorable John Bruce, the Judge of the United States District Court for the Middle and Northern Districts of Alabama.

J. A. W. SMITH.

Sworn to and subscribed before me
this 6th day of October, 1893.

N. W. TRIMBLE,
Clerk.

150 U.S. 150

No.....

In the Supreme Court of the United States.

Exparte LEWIS E PARSONS, JR.

Exparte ALEXANDER R. NININGER.

Separate Petitions for Mandamus.

BRIEF OF DAVID D. SHELBY,

On Each Motion for Leave to File.

R. F. Dickson, Printer, Huntsville, Ala.

In the Supreme Court of the United States

Exparte LEWIS E PARSONS, JR.
Exparte ALEXANDER R. NININGER.

Separate Petitions for Mandamus.

The Two Cases Present the Same Facts and Questions of Law, and are Discussed Jointly.

BRIEF OF DAVID D. SHELBY,

On Each Motion for Leave to File.

STATEMENT OF FACTS.

Alexander Ramsey Nininger was nominated by President Harrison, and by and with the advice and consent of the Senate, appointed United States Marshal for the Northern District of Alabama for the term of four years. His commission is dated March 20th, 1890, and confers on him the right "to have and to hold the said office with all the powers, privileges and emoluments to the same of right appertaining unto him, the said Alexander Ramsey Nininger, for the term of four years from the date hereof, subject to the conditions prescribed by law."

On the 4th of February, 1890, Lewis E. Parsons, Jr., was in like manner nominated and appointed United States District Attorney for the Northern and Middle Districts of Alabama for the term of four years.

On the 26th day of May, 1893, the following letter was written by the President to Mr. Parsons:

EXECUTIVE MANSION,
Washington, D. C., May 26th, 1893.

SIR: You are hereby removed from the office of Attorney of the United States for the Northern and Middle Districts of Alabama, to take effect upon the appointment and qualification of your successor.

GROVER CLEVELAND.

To LEWIS E. PARSONS, JR.,
Birmingham, Ala.

A similar letter of the same date was written to Mr. Nininger. Mr. Nininger replied, addressing his letter to the Attorney General, enquiring for the authority by which he was said to be removed, and expressed his willingness to surrender the office at any time any statute or law was shown him authorizing his removal.

Mr. Parsons replied as follows:

"BIRMINGHAM, ALA., June 5th, 1893.

"To the PRESIDENT OF THE UNITED STATES,
"Washington, D. C.

"SIR: Your communication of 26th May, 1893, assuming to remove me from the office of United States District Attorney for the Northern District of Alabama, has been received and duly considered.

"My commission bears date February 4, 1890, and authorizes me to hold said office for the definite term of four years from the date thereof fixed by law, and I am advised by counsel, and it is my own opinion, that you have no power to remove me, and I respectfully decine to surrender the office.

"Very respectfully,
"LEWIS E. PARSONS, JR.,
"United States Attorney for the Northern
District of Alabama."

This reply was posted to the President of the United States on the day of its date.

On the 26th day of May, 1893, the President nominated Emmet O'Neal for the office of United States District Attorney for the Northern District of Alabama, to hold said office "until the end of the next session of the Senate of the United States and no longer." In like manner he nominated J. C. Musgrove for the office of United States Marshal of the Northern District of Alabama. Mr. Musgrove demanded of Mr. Nininger the books and papers appertaining to the office of United States Marshal, and Mr. Nininger declined to surrender the same. Mr. O'Neal made like request of Mr. Parsons in reference to the office of United States District Attorney, and Mr. Parsons declined to surrender the same. Both Parsons and Nininger continued to hold their respective offices and the books and records relating to the same until the 20th of June, 1893.

On the 19th day of June, 1893, an adjourned term of the circuit court was to be held at Birmingham, Alabama. When the judge appeared to open the court Mr. Parsons was present and presented his commission, claiming the right to act as United States District Attorney. Mr. Nininger was present and presented his commission and claimed the right to act as United States Marshal. Mr. O'Neal and Mr. Musgrove were also present, claiming the right to act under their respective commissions, which were also presented to the judge.

The court recognized the new officers. The court then being opened and adjourned until the next day, June 20th, 1893, an order was made on the motion of J. C. Musgrove requiring A. R. Nininger to surrender to him the books, papers and prisoners of the United States appertaining to the office of the United States Marshal. On the motion of Emmet O'Neal a like order was made requiring Lewis E. Parsons, Jr., to surrender to Emmet O'Neal the books and papers appertaining to the office of the United States District Attorney.

On the 22nd day of June, 1893, A. R. Nininger and Lewis E. Parsons, Jr., placed on the motion docket of the lower court separate motions duly verified by them, stating the facts of their respective cases. The petition or motion of A. R. Nininger prays that the court will make an order declaring said commission issued to J. C. Musgrove to be invalid, having been issued without authority; and that petitioner be put in possession of the books, papers, property and prisoners of the United States appertaining to the office of United States Marshal, and that the order made by the court June 20th, 1893, relating to the same, be vacated and set aside, and that he be permitted to perform the duties of said office of the United States Marshal until the expiration of his term fixed by law and by his commission. The petition or motion of Lewis E. Parsons, Jr., concludes with a similar prayer. The court below declined to take any action whatever in regard to the motions except to decline to decide them. Mr. Parsons and Mr. Nininger now separately petition this court for the writ of mandamus commanding the judge of the lower court to vacate said orders and to reinstate petitioners in office.

Mr. J. A. W. Smith having filed briefs for the petitioners covering all the points in the cases, this additional brief relates only to our contention that, *Where Congress has the power to create an office, it may prescribe the term for which it shall be held by the incumbent, and the constitution confers no power of removal on the President in such case.*

BRIEF.

Section 776 of the Revised Statutes of the United States provides for the appointment of a marshal for each district, including the Northern District of Alabama. Section 767 provides for the appointment of United States District Attorneys, including the district here in question. Section 779 is in these words: "Marshals shall be appointed for a term of four years." Section 769, in words equally as clear, fixes the term of office of the United States District Attorneys at four years. Nininger's commission shows his nomination by the President and his appointment by the President "by and with the advice and consent of the Senate for the term of four years." Parson's commission is in the same terms.

President Cleveland's letter to Mr. Parsons and his letter to Mr. Nininger, and his appointment of Mr. O'Neal to the one office and Mr. Musgrove to the other, are intended to remove Parsons and Nininger from their respective offices before the expiration of their respective terms for which they have been appointed. The authority and power of the President to remove these officers is denied. It will be conceded that if he has such authority it must be found either in the Statutes of the United States, or in the Constitution of the United States. Do the statutes confer on him such power?

The Tenure of Office Act which is embodied in Sections 1767, 1768, 1769, 1770, 1771 and 1772 of the Revised Statutes of the United States provide the mode of appointment, suspension and removal of officers by the President. These sections clearly repeal all other statutes provided for the removal or suspension of officers, for section 1772 made it a high misdemeanor to remove or appoint an officer contrary to this statute. On March 3d, 1887, these several sections, constituting the "Tenure of Office Act," were repealed. Suppliment to Revised Statutes, second edition,

page 558. These statutes being repealed, no statutory power was left in the President to suspend or remove an officer with a fixed term of office. Such previous statutes as conferred this power (if there were any applicable to this case) were repealed by the Tenure of Office Act, and it being in its turn repealed, the former acts conferring the power would not be revived. "Whenever an act is repealed which repeals a former act, such former act shall not thereby be revived unless it be expressly so provided." R. S. U. S., sec. 12. Moreover, when the Revised Statutes were adopted or enacted, all statutes previous to December 1st, 1873 (no portion of which is embraced in the revision), were expressly repealed except so far as they were inserted in the Revised Statutes. R. S. U. S., sec. 5596. If one asserts that there is a statute which confers this authority to remove upon the President he should, of course, produce it. No such statute has yet been cited.

Our attention was called in the argument upon the previous hearing to Section 790 of the Revised Statutes: "Every marshal or his deputy, when removed from office, or when the term for which the marshal is appointed expires, shall have power notwithstanding to execute all such precepts as may be in their hands respectively at the time of their removal or expiration of office. * * * " This section does not purport to confer any authority on any one to remove a marshal from office. It originally formed part of the 28th section of the Judiciary Act of 1789, Doolittle vs. Bryan, 14 Howard, 563; and at the time of its enactment, and for a long time subsequent, both United States marshals and district attorneys held their commissions at the pleasure of the President. This section had its place in the Revised Statutes at the time of their enactment, because section 1767, which was a part of the Tenure of Office Act, and which provided for removals from office, also became a part of the Revised Statutes. Since the repeal of the Tenure of Office Act section 790 has no application so far as removals are concerned. This statute still has the effect of making the marshal a *de facto* officer after the expiration of his term to the extent of making service by him of precepts valid and binding. The statute has no word in it conferring power or authority on the President, or on any one, to remove an officer.

There being no statute conferring this power of removal upon the President, the next question is whether or not it is conferred on him by the Constitution of the United States. The question is not one of the general power of removal in the absence of a constitutional provision or a statute fixing the tenure of office: the question is whether or not the constitution confers on the President the power to remove an inferior officer whose office is created by law and term fixed by the power which created the office. I quote from Article second of the Constitution of the United States, the parts of the constitution that are usually cited when this question is under discussion. "The executive power shall be vested in a President of the United States of America; * * * he shall nominate and by and with the advice and consent of the Senate shall appoint ambassadors and all other public ministers and consuls, Judges of the Supreme Court, and all other officers of the United States, whose appointments are not herein otherwise provided for, and which shall be established by law: but the Congress may by law vest the appointment of such inferior officers as they think proper, in the President alone, in the courts of law, or in the heads of departments. The President shall have the power to fill up all vacancies that may happen during the recess of the Senate, by granting commissions which shall expire at the end of their next session; * * * he shall take care that the laws be faithfully executed, and shall commission all the officers of the United States."

In the discussion of the President's power of removal of officers, those who claim that he has such power under the constitution, invariably describe it as an implied power. The constitution certainly confers no express power of removal for the subject is not referred to in the enumeration of the President's powers. The removal of civil officers is provided for by impeachment and in such cases the removal is by the Senate and not by the President. If he have such implied power in some cases, it would be logically impossible to make it applicable to the offices of United States district attorney and United States marshal, for they belong to that class of inferior officers whose offices are created by statute, and whose appointment is not vested in the President by the constitution; but that instrument has left it within the power of

Congress to vest even the right to appoint them "in the courts of law or in the heads of departments." If Congress has the power, as it clearly has by the words of the constitution, to provide that the President shall not appoint these officers, it cannot be questioned that it also has the power to fix the terms of office beyond the control of the executive power. But has the President any implied power of removal? If the power be an incident of the right to appoint, it resides in the President and Senate jointly, and not in the President alone. It cannot be derived or inferred from his general executive authority, for the duty to execute the laws no more includes the power to remove an officer than it does to create an office. He can execute but not make laws. It is necessary to raise revenues to have the laws executed, and yet no one would claim that the President would have the power to levy a tax. The President is the Prime Minister of the Nation rather than its monarch. He is subject to law, and has no claim to the infallibility which the doctrine of divine right ascribes to kings. The constitution substituted for divine right a reign of law. When the President acts, his authority must exist. He cannot ask that his command shall be a justification for a breach of law. 2 Hare's Am. Const. Law, 844. The power to remove officers at will is clearly not a necessary part of his executive authority. It has often been conferred upon him; it may sometimes be wise to do so, but when he has such power it is by virtue of a statute which vests him with the power, and it is not a part or incident of his executive power. These offices in question are created by statute. The duties of those who fill them are defined. Their pay prescribed, and their tenure, or mode or manner of removal, may be regulated by law. If the President had the constitutional power to remove it could only be limited by the constitution, and yet Congress has often regulated the removal of officers and fixed their terms. "The President shall have power to fill up all vacancies that may happen during the recess of the Senate, by granting commissions which shall expire at the end of their next session." The terms of the commissions issued to O'Neal and Musgrove conform to this section of the constitution. The power conferred by this section arises from the necessity, because the public service would suffer unless the vacancy is filled. "Fill up

vacancies that may happen," are the words used. The provision that the commission expires at the end of the next session excludes the conclusion that the President may create vacancies to fill, for if he has that right the Senate would be without authority in the matter, for the President could create vacancies in every office and renew the commissions of his appointees after each adjournment of the Senate, if it failed to consent to his appointments. He would be the master of all offices to be filled by appointment, and the Senate's advice and consent would be without force. The vacancies referred to by the constitution are those which may happen by death, resignation, the expiration of term, or removal by impeachment, or removal by authority conferred by statute.

The vacancies referred to in this paragraph of the constitution are those that may happen during the recess of the Senate. If the vacancies happen during a session of the Senate, and the office is one to be filled by the President and Senate jointly, the President should make the appointment while the Senate is in session. In responding to a question of this kind, Mr. Justice Jackson said: "The vacancy having occurred during the session of the Senate, I do not think the President has the authority, under the constitution, to fill it during the recess of the Senate." In re Yancy, 28 Fed. Rep., 450.

If it be true that the President has no authority, under the constitution, to fill vacancy during the recess of the Senate, which happened while the Senate was in session, surely the constitution does not confer on him the power to both create and fill vacancies during the recess of the Senate.

If these statutes fixing the terms of office are constitutional, then the President has no such right of removal as is claimed here. Congress has often exercised such power heretofore without question.

The first section of the Act of May 15th, 1820, fixed the term of district attorneys at four years, and provided (what is now repealed) "that they should be removable from office at pleasure." In 1863 Congress passed the National Banking Law. It provided for the appointment of a Comptroller of the Currency, and fixed his term of office at five years "unless sooner removed by the President by and with the consent of the Senate." What

inferences follow from this legislation? And they are merely examples of many other statutes. The right of removal at pleasure conferred by the statute of 1820 was superfluous if the President had the same authority under the constitution, and it was useless for Congress to limit the tenure of office by the one statute to four years and by the other to five years, for the President might shorten or extend them indefinitely, as he clearly can if he has the right of removal. If the President has the constitutional right of removal it is clearly unconstitutional for Congress to limit the right by fixing the term of office. Yet this right has been often exercised by Congress without question.

In section 1537 of 2 Story on the Constitution, the author says: "It is observable that the constitution makes no mention of any power of removal by the executive of any officers whatsoever. As, however, the tenure of office of no officers except those in the judicial department, is, by the constitution, provided to be during good behavior, it follows by irresistible inference that all others must hold their offices during pleasure, *unless Congress shall have given some other duration to their office.*" Story clearly recognizes the right of Congress to fix the tenure, and that this action would defeat the right of removal. In 1 Kent's Commentaries, marginal page 310, the author, after commenting on the passage of the Act of 1789, says: "This amounts to a legislative construction of the constitution, and it has ever since been acquiesced in and acted upon as decisive authority in the case. It applies equally to every other officer of the government appointed by the President and Senate, *whose term or duration of office is not specially declared.*" In this pointed way Chancellor Kent recognizes that the legislative construction, as it is called (Act of 1789), is not applicable to cases where the term of office is fixed by law. It may be well to note here that the act and debate of 1789 related to one of the "heads of departments," and not to one of the inferior offices provided for by the constitution. It will be seen that the authorities seem to recognize the right of Congress to fix a term of office even for the heads of departments, which are offices provided for by the words of the constitution. The debate and contention was about offices of this character. I find no judicial opinion or statements by eminent statesmen intimating that Congress has not the power to fix the

term of office of the inferior officers whose offices are created by Congress under the authority conferred by the constitution.

In *ex parte* Hennen, 13th Peters, 230, the Supreme Court of the United States clearly and distinctly recognizes the authority of Congress to fix the terms of inferior officers. That case related to the office of circuit court clerk. Instead of conferring the power of appointment of clerks upon the President and Senate, Congress conferred it on the judge, but Congress did not fix a term of office for the clerk. The judge removed the clerk from office. The question was raised by a mandamus as to whether or not the removal was legal. The court held: "No tenure of this office being prescribed by the constitution or laws of the United States, it is held at the will of the appointing power and of the incumbent, and the former may remove the latter at pleasure." The argument and reasoning of the court shows clearly that if Congress had fixed the tenure of the clerk's office that the appointing power could not have disregarded it. The court said: "By the Constitution of the United States, Art. 2, Sec. 2, it is provided that the President shall nominate, and by and with the advice and consent of the Senate, shall appoint certain officers therein designated, and all other officers of the United States, whose appointments are not herein otherwise provided for, and which shall be established by law; but the Congress may by law vest the appointment of such inferior officers as they shall think proper, in the President alone, in the courts of law, or in the heads of departments. The appointing power here designated in the latter part of the section, was, no doubt, intended to be exercised by the department of the government to which the officer to be appointed most appropriately belonged. The appointment of clerks of courts properly belongs to the courts of law; and that a clerk is one of the inferior officers contemplated by this provision in the constitution cannot be questioned. * * * The constitution is silent with respect to the power of removal from office, where the tenure is not fixed. It provides that the judges, both of the supreme and inferior courts, shall hold their offices during good behavior. But no tenure is fixed for the office of clerks. Congress has, by law, limited the tenure of certain officers to the term of four years, 3 Story, 1790; but expressly providing that

the officers shall, within that term, be removable at pleasure; which, of course, is without requiring any cause for such removal. The clerks of courts are not included within this law, and there is no express limitation in the constitution or laws of Congress upon the tenure of the office.

"All offices, the tenure of which is not fixed by the constitution or limited by law, must be held either during good behavior, or (which is the same thing in contemplation of law) during the life of the incumbent; or must be held at the will and discretion of some department of the government, and subject to removal at pleasure."

The court then proceeds to cite a number of analagous state cases which recognize the principle "that the power of removal was incident to the power of appointment in the absence of all constitutional or legislative provision on the subject." This case (ex parte Hennen), and the cases cited in it, show that the power of removal is not an incident of the power of appointment when the term of office is fixed by statute.

In Marbury vs. Madison, 1 Cranch, 137, 162, Chief Justice Marshall said: "Where an officer is removable at the will of the executive, the circumstance which completes his appointment is of no concern; because the act is at any time revocable; and the commission may be arrested if still in the office. But when the officer is not removable at the will of the executive, the appointment is not revocable, and cannot be annulled. It has conferred legal rights which cannot be resumed." * * * Mr Marbury, then, since his commission was signed by the President and sealed by the Secretary of State, was appointed; and as the law creating the office gave the officer a right to hold for five years independent of the executive, the appointment was not revocable, but vested in the officer legal rights which are protected by the laws of his country. * * * It (the office in question) has been created by special act of Congress, and has been secured, so far as the laws can give security, to the person appointed to fill it, for five years." In that case the Supreme Court held that the President had no right to withdraw the commission, or to withhold it; and, of course, it is an authority to show that the President would have had no right to remove Mr. Marbury, whose term

of office was fixed at five years, after he had received his commission.

Senator Edmonds, after delivering his own opinion in the impeachment trial of the President against the constitutional right of removal, refers to this case in these words: "Marbury vs. Madison, 1 Cranch, is, as I understand it, exactly in point." Impeachment of Andrew Johnson, vol. III, page 86. In McAllister vs. United States, 141 U. S., 188 and 189, Marbury vs. Madison is quoted with approval. In McAllister's case the right to suspend a territorial judge and to appoint his successor, by and with the advice of the Senate, is sustained by the court by authority of the statutes then in force, which constituted part of the tenure of office act, and which have been since repealed. The President, in his letter to Ward McAllister, Jr., cited section 1768 of the Revised Statutes as conferring the authority on the President to suspend McAllister from office. Ibid, page 192. In the course of its opinion in the McAllister case the court said: "What may be the powers of the President over territorial judges, now that section 1768 is repealed, is a question we need not now discuss." Ibid, page 178. After quoting Marbury vs. Madison, the court said: "Nothing in those observations militates, in any degree, against the views we have expressed. On the contrary, the chief justice asserted the authority of Congress to fix the term of a justice of the peace in the District of Columbia beyond the power of the President to lessen it by his removal, or by withholding his commission after his appointment has been made, pursuant to an act of Congress, by and with the advice and consent of the Senate, and after the commission has been signed by the President and sealed by the Secretary of State. So, in the present case, while Congress fixed the term of office of the district judge for Alaska at four years, and until his successor qualified, it did so without modifying, and, therefore, in view of the statute then in force, giving the President power to suspend, in his discretion, any civil officer (other than judges of the courts of the United States) appointed by him, with the advice and consent of the Senate, until the end of the next session of that body. The decision in the present case is a recognition of the complete authority of Congress over territorial offices, in virtue of 'those

general powers which that body possesses over the Territories of the United States,' as Marbury vs. Madison was a recognition of the power of Congress over the term of office of a justice of the peace for the District of Columbia."

In the case of the United States vs. Guthrie, 17 Howard, 287, the majority of the court held that a writ of mandamus should not issue to the Secretary of the Treasury, commanding him to pay to a judge of a territory his salary for the unexpired term of the office from which he had been removed by the President and another person appointed thereto. The court decided against the authority of the court to grant a mandamus in the case stated. McLean, Justice, believing that the court had the authority to grant the writ, was required also to consider the question of the President's power of removal. In an able opinion he held that the constitution conferred no such power on the President. Senator Edmonds, in referring to this case, said that "the only judge, whose views of jurisdiction made it proper for him to speak, upheld the same doctrine. Referring to the doctrine of Marbury vs. Madison. Impeachment of Andrew Johnson, vol. III, page 86.

There is nothing in the case of Blake against the United States (103 U. S., 227) that is opposed to the views expressed in the preceding cases. It is there held that the President has the power to supersede or remove an officer of the army or of the navy by the appointment, by and with the advice and consent of the Senate, of his successor. The case involved no question of a term fixed by statute. It contains no argument that indicates a denial of the power of Congress to fix such term. On the contrary, *Ex parte* Hennen is quoted approvingly to the effect that "all offices, the tenure of which is not fixed by the constitution, or limited by law, must be held during good behavior, etc." The case clearly recognizes as law that the tenure of office, not fixed by the constitution, may be fixed by statute.

In the case of the United States ex. rel. John Bigler vs. John M. Avery the court discussed the exact point involved in these cases. The case is reported in Deady's Reports, page 204. The second head note is in these words:

"Where Congress has the power to create an office it may prescribe the term for which it shall be holden by the incumbent, and in such case there is no power of removal during such term."

After quoting with approval the opinion of Mr. Justice McLean in United States vs. Guthrie, 17 How., 284, and remarking that that majority of the court, "avoiding the decision of the main question—the power of removal—decided that the remedy was not well taken," the judge proceeded to discuss the power of removal from a constitutional and historical standpoint. On page 212 of the report the court says:

"In the progress of time it has been found, or deemed, that the unqualified power of removal from office by the President works injuriously, and Congress has interfered to control and regulate the exercise of that power by the passage of what is known as 'The Tenure of Office Bill.'"

"In the passage of this act by Congress it must have been assumed, and, as I think, correctly, that the constitution left the subject of direct removals from office to be regulated by the legislative power. In the great debate, which occurred in the Senate on this subject in 1835, Mr. Clay, Mr. Webster and Mr. Calhoun all agreed in maintaining that the constitution did not give the President the power of removal and that the power was properly subject to legislative control and regulation.

"From Mr. Calhoun's speech on this subject I quote as follows:

"If the power to dismiss is possessed by the Executive he must hold it in one of two modes: either by an express grant of the power in the constitution or as a power necessary and proper to execute some power expressly granted by that instrument. All the powers under the constitution may be classed under one or the other of these heads; there is no intermediate class. The first question, then, is, has the President the power in question by an express grant in the constitution? He who affirms he has is bound to show it. That instrument is in the hands of every member; the portion containing the delegation of power to the President is short; it is comprised in a few sentences. I ask the Senators to open the constitution, to examine it and find, if they can, any authority

of the President to dismiss any public officer. None such can be found; the constitution has been carefully examined and no one pretends to have found such a grant. Well, then, as there is none such, if it exists at all, it must be as a power necessary and proper to execute some granted power; but if it exists in that character it belongs to Congress and not to the Executive. I venture not the assertion hastily; I speak on the authority of the constitution itself—an express equivocal authority which cannot be denied or contradicted. Hear what that sacred instrument says: 'Congress shall have the power to make all laws which shall be necessary and proper for carrying to execution the foregoing powers (those granted to Congress itself) and all other powers vested by this constitution in the government of the United States or in any department or officer thereof.' Mark the fullness of expression, Congress shall have power to make all laws, not only to carry into effect the powers exclusively delegated to itself but those delegated to the government or any department or officer thereof; comprehending, of course, the power to pass laws necessary and proper to carry into effect the powers expressly granted to the executive department. It follows that to whatever grant of power to the Executive the power of dismissal may be supposed to attach; whether to that of seeing the laws faithfully executed or to the still more comprehensive grant, as contended for by some, vesting executive power in the President, the mere fact that it is a power appurtenant to another power and necessary to carry it into effect transfers it by the provisions of the constitution cited from the Executive to Congress and places it under its control to be regulated in the manner which it may judge best.

"Such are the arguments by which I have been forced to conclude that the power of dismissing is not lodged in the President but is subject to be controlled and regulated by Congress. I say forced, because I have been compelled to the conclusion in spite of my previous impressions, relying on the early decision of the question and the long acquiescence in that decision."

Continuing on page 214 of the report, Judge Deady says: "To the force of this argument I think nothing can be added.

It amounts to demonstration. The power is with Congress to regulate the removals from office."

We deny that there has been any practice or usage that applies to offices with fixed terms that shows a right of removal in the President. Such power has been exercised under statutes; and, also, in cases where no term was fixed. Such practice or usage, if it existed, would not control the courts. "If the courts recognize executive decision and practice as authoritative on them in construing the constitution, they may abdicate one of their most important duties, and lessen their power to check all violations of the constitution by any department of the government, legislative, executive, or judicial." In re Yancy, 28 Fed. Rep., 452. In the United States vs. Kirkpatrick, 9 Wheaton, 720, Story, Justice, said: "But whatever weight the practice of the government may be entitled to, in cases of doubtful construction, it can have no influence to change the clear language of the law."

The impeachment trial of Andrew Johnson has been fitly termed the trial of the constitution. One of the articles of impeachment charges the President with unlawfully removing Edwin M. Stanton from the office of Secretary of War. By the terms of Mr. Stanton's commission he held the office "during the pleasure of the President of the United States for the time being." His removal occurred while the Tenure of Office Act was in force. The President, in his answer to the articles of impeachment, claimed that he had the constitutional right to remove Stanton, and claimed also that the Tenure of Office Act, which sought to limit the right of removal, was unconstitutional. The question as to whether the constitution conferred the right of removal on the President was considered by the senators, who filed opinions in the case. The question before the court on these motions is not altogether analagous. Stanton's office placed him at the head of one of the departments referred to in the constitution. His commission read: "At the pleasure of the President." The United States District Attorney and the United States Marshal are inferior officers under the constitution. Their terms of office have been fixed by statute. There was a contention among the senators as to whether or not the Tenure of Office Act included and protected

the Secretary of War. There can be no dispute here about the fact of the tenure of office of the marshal and district atttorney is clearly fixed in each case at four years.

I wish here to submit to the court the opinions filed by the senators on that trial:

Senator Sherman said: "Surely when these express powers, far less important, are so carefully limited by the constitution, an implied power to remove at pleasure the multitude of officers created by law cannot be inferred from that instrument. If so the implied power swallows up and overshadows all that are expressly given. What need he care for the Senate when he may remove in a moment, without cause, all officers appointed with their consent? What need he care for the law when all the officers of the law are instruments of his will, holding office, not under the tenure of the law, but at his pleasure alone? The logical effect of this power, if admitted to exist under and by virtue of the constitution, is revolution." Impeachment of Andrew Johnson, vol. III, page 6.

Senator Howard said: "The doctrine, asserted broadly and unconditionally in Mr. Johnson's answer, that he has, as a separate and independent power under the constitution, the power of removal, leads to most fatal consequences. It directly subverts the popular character of the government." Impeachment of Andrew Johnson, vol. III, page 35.

Senator Howe said: "This power of removal is, then, not vested in the President by anything said in the constitution nor by anything properly implied from what is said. It seems to me, on the contrary, it is postively denied by the manifest purpose of the constitution. * * * My conclusion is that the President derives no authority from the constitution to dismiss an officer from the public service." Impeachment of Andrew Johnson, vol. III., pages 63–65.

Senator Yates said: "The provision that 'the President shall have power to fill all vacancies during the recess of the Senate by granting commissions which shall expire at the end of the next session,' excludes the conclusion that he may create vacancies and fill them during the session and without the concurrence of the Senate. If this view is not correct, it would seem that the whole provision of the constitution on this point is meaningless

and absurd." Impeachment of Andrew Johnson, vol. III, pages 103–104.

Senator Sumner said: "The dilemma is this: If the President can remove Mr. Stanton during the session of the Senate, without any power by statute, it is only by virtue of a perogative vested in him by the constitution, which must necessarily override the Tenure of Office Act as an unconstitutional effort to abridge it. If, on the other hand, this act is constitutional, the perogative of removal is not in the President and he violated the constitution when he assumed to exercise it.

"The Tenure of Office Act cannot be treated otherwise than constitutional." Impeachment of Andrew Johnson, vol. III, page 268.

Senator Pomeroy said: "Finally, the claim set up in Mr. Johnson's answer of power at any and all times to remove executive officers, for cause to be judged of by him alone, effectually abrogates the constitutional authority of the Senate in respect to official appointments, subverts the principles of republican government, and usurps the unlimited authority of an autocrat." Impeachment of Andrew Johnson, vol. III, page 341.

Senator Morrill, of Vermont, said: "It is true the President may temporarily fill vacancies which happen during the recess of the Senate; but it is going too far to assume that he may first do an act not allowed by the constitution, in order to open the door so that he may do another thing which is allowed; that he may empty under the power only to fill; or that he may make a vacancy to happen with a view to an exercise of the power to fill a vacancy. Things happen by chance—as by death, resignation, absence—not by previous contrivance. An insurance policy is valid when the ship happens to get foundered, not when it is designedly scuttled and sunk by the owner. The power to create vacancies at will, to fill them with A, and then to come to the Senate for advice and consent to fill them with A or with B, is an absurdity. The faithful daughter asks parental advice and consent before she gets married, not after. The power claimed by President Johnson to create vacancies at will would blot out one of the most important functions of the Senate, designed to be one of the highest safeguards of the constitution against executive indiscre-

tions and usurpations, as even appointments consented to during the session of the Senate, if the claim of unlimited power of removal by the President were to be tolerated, might be set aside the moment after the adjournment of the Senate for other and different appointments never advised and never consented to by the Senate. All stability would be lost, and all officers of the government would hold their places at the mere will and caprice of the President. It would enthrone the one-man-power against all else. Such a power in a free government would be neither prudent nor safe, though placed in the most scrupulous hands; and if, by chance, in other hands, it would be dangerous." Impeachment of Andrew Johnson, vol. III, page 137.

Senator Harlan said: "The constitution does not anywhere in terms confer on the President the authority to make removals; nor does it anywhere confer on him this right by necessary implication." Impeachment of Andrew Johnson, vol. III, p. 233.

Senator Patterson, after giving his own opinion against the power of the President, quoted from Webster and Clay in the debate of 1835, as follows: "Mr. Clay said: 'It is the legislative authority which creates the office, defines its duties, and may prescribe its duration. I speak, of course, of offices not created by the constitution, but the law. The office coming into existence by the will of Congress, the same will may provide how, and in what manner, the office and officer shall cease to exist. It may direct the conditions on which he shall hold the office, and when and how he shall be dismissed.

"'It would be unreasonable to contend that, although Congress, in pursuance of the public good, brings the office and the officer into being and assigns their purposes, yet the President has a control over the officer which Congress cannot reach and regulate.' * * *

"The language of Mr. Webster was not less explicit or emphatic.

"'I think then, sir, that the power of appointment naturally and necessarily includes the power of removal, where no limitation is expressed, nor any tenure but that at will declared. The power of appointment being conferred on the President and Senate, I think the power of removal went along with it, and should have been

regarded as a part of it and exercised by the same hands. I think the legislature possesses the power of regulating the condition, duration, qualification and tenure of office in all cases where the constitution has made no express provision on the subject. I am, therefore, of opinion that it is competent for Congress to decide by law, as one qualification of the tenure of office, that the incumbent shall remain in place till the President shall remove him, for reasons to be stated to the Senate. And I am of opinion that this qualification, mild and gentle as it is, will have some affect in arresting the evils which beset the progress of the government and seriouly threaten its future prosperity. * * *

"'After considering the question again and again within the last six years, I am willing to say that, in my deliberate judgment, the original decision was wrong.'" Impeachment of Andrew Johnson, vol. III, page 311.

Mr. Patterson added that Mr. Calhoun and Mr. Ewing were equally positive in their advocacy of the bill and Marshall, Kent and Story seem to have entertained similar views in respect to the original intent of the constitution. Impeachment of Andrew Johnson, vol. III, page 312.

Senator Edmunds, after analying the debates and votes upon the act of 1789 and showing that it was inconclusive as a construction of the constitution, said: "As to the supposed recognition by the laws themselves, and a practice under them, it need only be said that the whole course of legislation, comprised in more than twenty statutes, has, until 1863, authorized the President to make removals; and hence they furnish no evidence of his powers, independently of the law, but the contrary. It needs no argument to show that what the laws have authorized they may forbid. No law can become so old that the legislative power cannot change it; and even as to legislative construction it is the same. A later Congress has just as much power in that respect as an earlier.

"The acts of 1792, 1835 and 1863, relating to *ad interim* appointments, which have always been acquiesced in without question from any source, are decisive utterances, so far as legiislative action can possibly be so, of the power of the law to regulate the exercise of powers and duties expressly conferred by the

constitution upon the President and Senate. Our own statutes and those of all States having written constitutions, are full of similar or analagous instances.

"Can it be said, then, that where the letter of the constitution is silent upon another branch of the same subject, the law has no power to speak, and that behind that veil of silence sleeps a kingly perogative of the President?" Impeachment of Andrew Johnson, vol. III, pages 85–86.

These opinions of Senators are not merely speeches. They are deliberate judicial judgments. Space permits only short extracts. I refer to the opinions as reported in full.

On both authority and reason Parsons and Nininger are entitled to retain their offices. The term being fixed by law, only the legislative power can shorten it. To change the statute is not within the authority of the executive or judicial department. That the executive and judiciary are not permitted to exercise any of the legislative power is an axiom in constitutional law and is universally recognized as a principle essential to the integrity and maintenance of the system of government ordained by the constitution.

This alleged constitutional power of removal, it is claimed, is beyond legislative control. This position is not consistent with other parts of the constitution. On Congress the power is conferred in express terms, "To make all laws which shall be necessary and proper for carrying into execution the foregoing powers and all other powers vested by this constitution in the government of the United States or in any department or officer thereof." Article 1, section 8.

To say that the President can remove an incumbent with a fixed term from his office without the direction or permission of Congress, is to affirm that he is superior in that respect and may disregard its enactments at pleasure. And more, it is to assert that Congress cannot prescribe the term of an office created by it so that the President cannot change the term. It is to assert that the President can regulate the powers conferred on Congress. This would be to reverse the meaning of the constitution. If he is permitted to annul a statute, why not permit him to annul the constitution? If to-day he may remove the marshals and district

attorneys, to-morrow he may remove the judges. The tenure of the former is fixed by statutes made by authority of the constitution. The tenure of the latter is fixed by the constitution itself. The one tenure is as binding on the Executive as the other. If he may annul a statute, why not the constitution? Unlawful power, not checked, grows, and there is but little progress in its evolution from annulling a statute to annulling the constitution. Unbending vigilance of the courts is the price of a perpetual constitution.

The letter of the constitution authorizes Congress to create these offices. It did create them. The very letter of the constitution authorized Congress to say, if it chose, that the incumbents should be appointed by the head of a department or by the courts of law. Congress, in fact, has provided that in some cases vacancies in them may be filed by the Circuit Justice. R. S. U. S., sec. 793. If these things are true, and they are in the plain English of the constitution, how is is possible to maintain that there is somewhere hidden between the lines of the constitution a power in the President that annuls these plain provisions and that vests in him a kingly perogative? No court has decided that he has this power, and distinguished statesmen, partial to Presidential power, have claimed it for him only in the absence of statutes fixing the tenure of office.

Even Germany refuses to consent that the Emperor can make or unmake law. His threat to enact the Army Bill by proclamation or prerogative is met with indignant resistance. The doctrine of legislation by proclamation, or the annulling of statutes by personal letters, has no place in this republic. It has no place at common law under the unwritten constitution of the mother country.

In 1613, Edward Coke, Chief Justice of England, said to King James: "The King, by his proclamation, or otherwise, cannot change any part of the common law or statute law." * * *

King James: "My Lords, I always thought, and by my saul I have often heard the boast, that your English law was founded upon reason. If that be so, why have not I and others reason as well as you, the judges?"

Coke, C. J.: "True it is, please your Majesty, that God has endowed your Majesty with excellent science as well as great gifts of nature; but your Majesty will allow me to say, with all reverence, that you are not learned in the laws of this, your realm of England. * * * The law is the golden met-wand and measure to try the causes of your Majesty's subjects, and it is by the law that your Majesty is protected in safety and peace."

King James (in a great rage): "Then I am to be under the law—which it is treason to affirm."

Coke, C. J.: "Thus wrote Bracton, '*Rex non debet esse sub homine, sed sub DEO ET LEGE.*'"

David D Shirley
Wayne Watson

15-0 U. S. 15-0

No. .....

IN THE

SUPREME COURT OF THE UNITED STATES.

EX PARTE LEWIS E. PARSONS, JR.

PETITION FOR MANDAMUS.

BRIEF OF J. A. W. SMITH,

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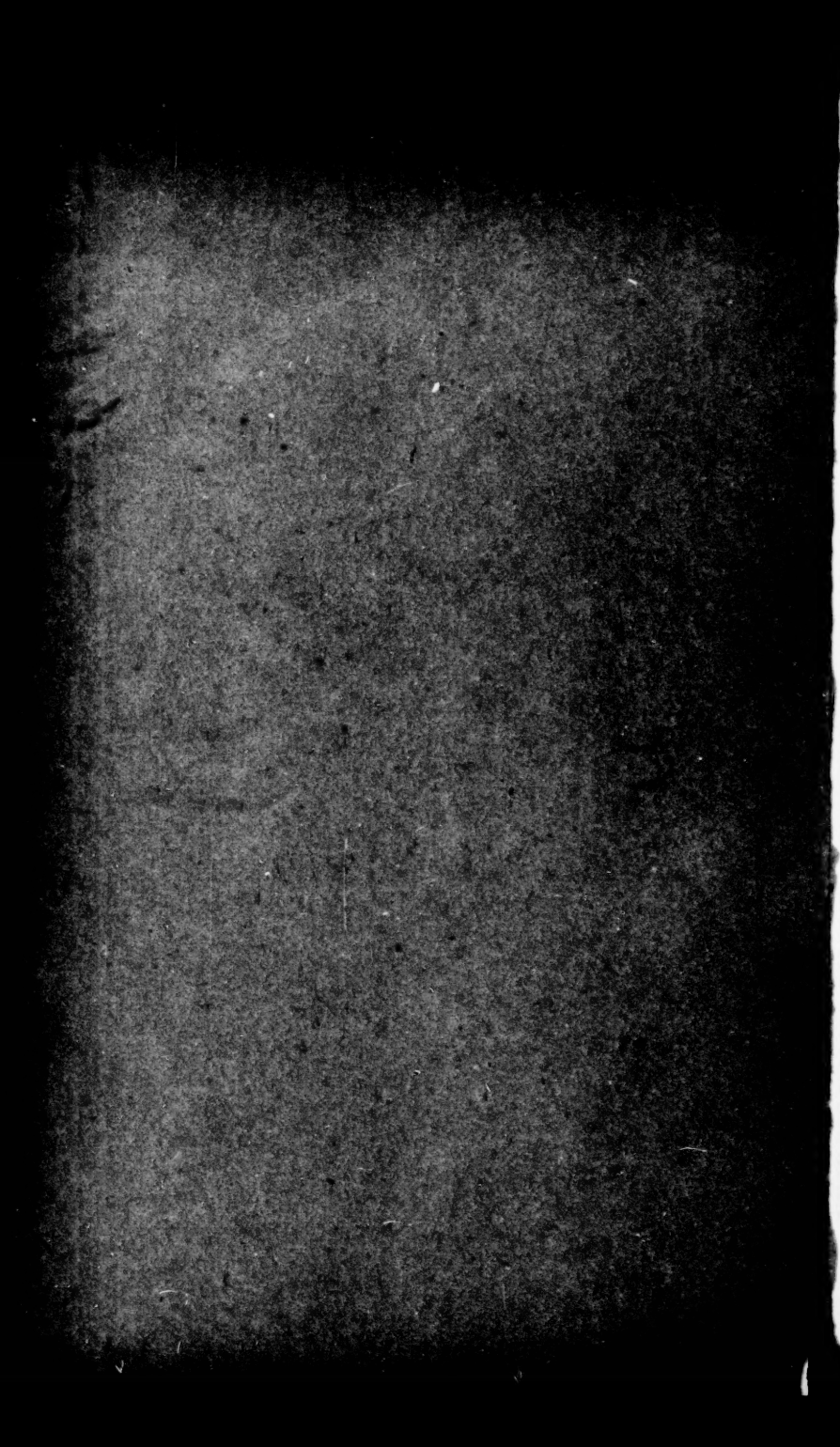
ROBERTS & SON, PRINTERS, BIRMINGHAM.



IN THE

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SEPARATE PETITIONS FOR MANDAMUS.

The Two Petitions Presenting the Same Facts and Questions of Law, are Discussed Jointly.

BRIEF OF J. A. W. SMITH,

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STATEMENT OF FACTS.

Lewis E. Parsons, Jr., was appointed United States Attorney for the Northern District of Alabama, on the 4th day of February, 1890, by President Harrison, by and with the advice and consent of the Senate. His commission and the statute (R. S., section 769) authorize him to hold said office for a term of four years. President Cleveland notified Parsons that he was removed from office, no cause being assigned, and, on the 26th of May, 1893,

appointed Emmett O'Neal to succeed him. On the same day J. C. Musgrove was appointed to succeed A. R. Nininger as Marshal of said District under like circumstances. Parsons and Nininger refused to surrender their offices, and deny the President's power to remove them.

On the 20th day of June, 1893, at a regular term of the Circuit Court of the United States for the Southern Division of the Northern District of Alabama the Hon. John Bruce, as Judge of said Court, recognized the said O'Neal and Musgrove as the officers of the United States, and caused separate orders to be made on the minutes of the Court, commanding the said Parsons and Nininger to turn over to said O'Neal and Musgrove the books, papers and other property appertaining to the said offices. Parsons and Nininger then separately moved the Court to vacate such orders and to reinstate them in office, which motions the Court refused to consider. They now separately petition this Court for a mandamus commanding the said Judge of the lower Court to vacate said orders and to reinstate them in office.

BRIEF AND ARGUMENT.

Parsons and Nininger were in the possession of the offices under color and claim of title, and had the right to perform the duties thereof until the question of title could be adjudicated in some proper proceeding instituted for that purpose.

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The only proceeding by which the title to a Federal office can be tried is by *quo warranto* in the name of the United States as plaintiff.

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Territory of Nebraska vs. Lockwood, 3 Wall., 236.

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19 Am. and Eng. Encyclopedia, p. 675.

Petitioners having been wrongfully deprived of their offices by the Court without due process of law, and in which they have *vested* rights (*Marbury vs. Maddison*, 1 *Cranch*, 137), are entitled to a mandamus requiring the lower Court to vacate the orders made and to reinstate them in office.

Ex parte Bradley, 7 Wall., 364.
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Especially is this true in view of the fact that *they* are powerless to use the name of the United States to institute a *quo warranto* by which to have the question adjudicated.

Section 769 of the Revised Statutes provides: "District Attorneys shall be appointed for a term of four years, and their commissions shall cease and expire at the end of four years from their respective dates."

Section 779 provides: "Marshals shall be appointed for a term of four years."

No statute was cited in the Court below, where counsel appeared in behalf of O'Neal and Musgrove, conferring power on the President to remove District Attorneys or Marshals. It was claimed that the Constitution confers the power, not in express terms, but by implication.

Our national government was founded upon the theory that all governmental power is derived from the people or from the States composing the Union. By the adoption of the Constitution, the people, or the States, delegated to one or the other of the three departments—the executive, the legislative, or the judicial—all the powers possessed by the National government. That the power to remove or to provide for the removal of District Attorneys and Marshals has been delegated to one of these departments there is no doubt. That it has been delegated to two of the departments will hardly be contended. It has not been delegated to the judicial department. Then to which one of the two—the executive or the legislative department—has the power been delegated?

Counsel for O'Neal and Musgrove contend (or, rather, did contend in the Court below) that the power has been delegated to the executive. They contend that there are three distinct and separate grants of power in the Constitution conferring this power upon the President. They claim that the provision of the Constitution which requires that the President "shall take care that the laws be faithfully executed" is broad enough to authorize him to make removals from office at pleasure. Justice McLean expressed the view in U. S. vs. Guthrie, 17 Howard, 305, "that the power to see that the laws are faithfully executed applies chiefly to the giving effect to the decisions of the courts when resisted by physical force." This view seems to us to be the correct one. A similar provision is in the Constitution of Alabama, and I suppose in most of the other States, but I have never heard of a Governor of any State undertaking, by virtue of such constitutional requirement, to remove officers whose terms were prescribed by the Legislature. The *law* provides that these officers shall hold their offices for four years from the dates of their commissions. Instead of seeing that *this law* is faithfully executed, or even using his influence to accomplish

such result, the President is himself endeavoring to violate the law, by taking from the incumbents offices before the expiration of the terms *prescribed by law*. If he can annul this law in the manner attempted, why can he not avoid the consequences of all law, upon the pretense that he has power to see the laws executed? It is as much the duty of the President to aid in the enforcement of the law in regard to the tenure of office as it is in regard to any other law.

It is also claimed that the provision of the Constitution declaring that the "executive power" shall be vested in the President, is a grant of power to make removals. The answer to this proposition is, that this general grant of "executive power" to the President was never supposed to invest him "with the appointing power, which, after long and earnest debate, was conferred upon the chief executive of the nation by express terms."

Hovey vs. The State, 119 Ind., 395.

See also Fox vs. McDonald, 13 So. R. (Ala.), 416.

If not sufficient to confer appointing power, for the same reason, it is insufficient to confer power to make removals.

If either of the foregoing provisions confers power either to appoint to or remove from office, it applies as well to fourth-class postmasters as it does to district attorneys and marshals, and, as to them, such power would not be claimed.

It is further claimed that section 2 of article 2 of the Constitution confers the power upon the President. That section reads: "He (the President) shall have power, by and with the advice and consent of the Senate, to make treaties, provided two thirds of the Senators present concur; and he shall nominate, and, by and with the advice and consent of the Senate, shall appoint ambassadors and other public ministers and consuls, judges of the Supreme Court, and all other officers of the United States whose appointments are not herein otherwise provided

for, and which shall be established by law; but the Congress may by law vest the appointment of such inferior officers as they think proper in the President alone, in the courts of law, or in the heads of departments."

Not one word is said about any power of removal. So the power contended for, if it exists at all, rests solely upon implication, and not upon any express grant of power. Does it exist even by implication, and, if so, is this implied power one contained IN the Constitution, so that Congress has no authority to regulate, limit, or otherwise control its exercise?

No implied power exists by virtue of the Constitution unless its exercise is absolutely necessary to enable the President to exercise some other power expressly granted him by that instrument. [U. S. vs. Avery, Deady, 204.] That he may appoint, it does not necessarily follow that he may remove; because the exercise of the one power is in no wise dependent on the other.

Express power is granted by the Constitution to Congress to create the offices here in controversy. Power granted to create an office and to prescribe the duties thereof, incidentally carries with it the power to fix a term. In fact the term is a part of the office. The further discussion of the power of Congress will be incidentally included in what follows, intended to show the want of any constitutional power in the President to make removals.

PRESIDENT HAS NO CONSTITUTIONAL POWER TO REMOVE.

The principle which was recognized by Congress at an early day, and which has ever prevailed in the courts of this country, that where an office has no tenure, the appointing power may exercise the power of removal, is not dependent for its existence upon the instrument granting the power to appoint, but rather arises from the OMISSION of the law creating the office to prescribe a term. If an office is created *by the Constitution*, and no

term is fixed by that instrument, whether Congress can prescribe a term is a constitutional question. But when an office is created *by Congress*, and no term is prescribed, the theory upon which it is held that the appointing power can remove rests upon the general principle that the Congress or other legislative body, in creating an office without a term, must have intended the appointing power could remove.

Ex parte Hennen, 13 Peters, 231.
Hallgreen vs. Campbell, 21 Am. St., 557.
Meacham on Public Offices, sections 445, 454.

Opposing counsel contend that Congress decided in 1789 that the President had constitutional power to remove officers appointed by the Executive with the advice and consent of the Senate, and that such legislative construction has been acquiesced in ever since. It is also claimed that a similar construction was made by Congress in 1835, and by the Senate upon the impeachment trial of President Johnson in 1867. We deny that either contention is true.

The question before Congress in 1789 was, whether the President *alone* had power to remove an officer appointed by the President, by and with the advice and consent of the Senate, when there was NO TENURE to the office, or whether it was necessary that the Senate should consent to such removal before it became effectual. It was admitted by all the members that the President and Senate—the two constituting the appointing power—could make the removal. Not, however, from anything contained *in* the Constitution, express or implied, but upon the general principle that the appointing power can remove in the absence of a law fixing a term to the office.

Ex parte Hennen, 13 Peters, 231.

Congress decided that, inasmuch as great inconvenience

would result from requiring the consent of the Senate before removals could be made, the President could remove without such consent. The question here is quite different. The law provides that these officers shall hold their offices for four years from the dates of their commissions, and this time has not expired.

The decision of Congress, referred to, insofar as it was held that there was an implied power residing in the appointing power to make removals, was more properly a construction of *the act of Congress* which omitted to prescribe a term to the office, than a construction of the Constitution. The only constitutional question decided was that the President *alone* could exercise the power, which was conceded to be in the appointing power, to make removals from office when there was no tenure fixed by law. In other words, after determining from a construction of *the statute*, which fixed no tenure and was silent as to any power of removal, or fixed a tenure but provided that the officer should be removed at pleasure, that the power of removal was by implication vested in the appointing power; the Congress then decided the only constitutional question raised, in favor of the power of the President *alone* to exercise this implied *statutory* power of removal.

Implied power to remove being conceded to be in the appointing power, the constitutional question then arises, whether the President *alone* can exercise this power, or whether the consent of the Senate is necessary to its exercise. This constitutional question does not arise in this case, because *there is no implied power of removal*, and hence no inquiry as to who shall exercise such a power. These offices have terms. The implied power of removal only arises when there is no term.

The power to fix a term depends, probably, upon the power to create the office. In regard to *constitutional* offices, a constitutional question would arise if Congress should attempt to

prescribe terms. The theory that the framers of the Constitution intended that the appointing power could remove, when that instrument created offices without terms, is very plausible. But the offices here in controversy are created by Congress, under Constitutional authority, and ~~where there is, in such cases~~ the omissions to prescribe terms, ~~they~~ are Congressional and not Constitutional omissions, and no *Constitutional* intention can be gathered from any omission of *Congress.*

Congress having fixed terms to the offices of District Attorney and Marshal, by virtue of the power conferred on that body by the Constitution, no other power, unless it is granted by the Constitution or laws, can shorten the terms, and no such authority having been given the President by either, his power to do so does not exist. The following cases support this proposition:

Marbury vs. Maddison, I Cranch, 137.
McAllister vs. U. S., 141 U. S., 174.
U. S. vs. Avery, — Deady, 204.
U. S. vs. Guthrie, 17 Howard, 305.
U. S. vs. Perkins, 116 U. S., 483.
Mullen vs. U. S., 140 U. S., 240.
Kilbourn vs Thompson 13 Otto 168

In the great debate in 1835, Congress having under consideration a bill restricting the power of the President in regard to making removals from office, nothing was decided as to the Constitutionality of the proposed legislation. True, that question was freely and ably discussed; and in its discussion, the fact that Webster, Clay and Calhoun all expressed the belief that Congress had power to regulate the tenure of office, is entitled to great weight. All that was decided, however, was that the bill should not become a law. It does not necessarily follow that, because Congress refused to enact proposed legislation, that that body decided it had not power to do so. It was probably deemed unwise legislation, and was, for that reason, defeated.

It is argued by the opposing counsel that, because the Senate failed to convict President Johnson in 1867, that that body thereby decided that the tenure of office law, which he had violated, was unconstitutional. Not so. The Senate only decided that he was not guilty of a crime. He had misconstrued the law. The question of the constitutionality of the tenure of office law was directly in issue when Congress passed that bill over the veto of the President, and its constitutionality was, by that action, sustained by a two thirds vote of both houses of Congress. Even had Congress in 1789 decided that the President had power, vested in him by the Constitution, to remove officers, the effect of the passage of the Tenure of Office Act, in 1867, was to *overrule* the former decision. Not only was the Tenure of Office law decided to be constitutional in 1867, but its modification in 1869 was another legislative construction that the law was constitutional. The Supreme Court in McAllister vs. United States, 141 U.S., 174, treated the law as constitutional, and referred the power, exercised by the President suspending a judge of a Territorial Court, to section 1768 of the Revised Statutes, and not to any implied power in the Constitution.

If the power was given by the Constitution to the President to make removals at his pleasure, either expressly or by implication, Congress could not fix a period when officers' terms should expire. Although the President may desire an officer to continue to perform the duties of an office, after the expiration of the term he is no longer entitled to do so; and in cases of the District Attorneys' and Marshals' offices, vacancies thus created may be filled by the Circuit Justice, despite the wishes of the President.

Revised Statutes, sec. 793.

The President can restore an officer whose term has expired only by a new appointment, made by and with the advice and consent of the Senate. If the Senate refuses to give its consent,

then the officer, once legally appointed by the President, *is removed* by operation of a law enacted by Congress.

An act approved June 20, 1874, (see supplement to Revised Statutes, second edition, page 18, sec. 2,) provides in substance: That the offices of District Attorney and Marshal shall be deemed vacant unless the officers shall reside in their districts and give personal attention to the business of the offices. This latter statute shows that Congress has asserted its own right to remove officers, or, which is the same thing, to prescribe conditions by which the offices become vacant. This legislation is inconsistent with any constitutional power of removal in the President. Either Congress or the President has assumed to exercise power not conferred by the Constitution. The Supreme Court has decided the power is with Congress.

This Court, in the case of Marbury vs. Maddison, 1 Cranch, 137, Chief Justice Marshall delivering the opinion, held, that the President had no power to remove a Justice of the Peace appointed by himself, with the consent of the Senate, whose term of office was fixed by act of Congress at five years.

It is contended by opposing counsel that the case of Marbury vs. Maddison is not an authority governing this case, because it is claimed that sub-division 17 of section 8 of article 1 of the Constitution gives to Congress some power in regard to the offices of the District of Columbia not possessed by that body in regard to Federal offices generally. That part of the Constitution provides: "That Congress shall have power to exercise exclusive *legislation* in all cases whatsoever over such District," etc.

The only extra power conferred by that constitutional provision upon Congress is to exercise *legislative* power to the exclusion of the States once owning the territory, and to the full extent that may be necessary to enforce a proper police regulation for such District. It was never intended to take from the President

any of his powers, otherwise granted, because the matter should happen to be concerning the District of Columbia. Congress is certainly the only department of the government that has power to exercise "*legislation*" upon the question of Federal offices. Only the *legislative* power of Congress extends farther in regard to the District of Columbia than to other portions of the United States.

A careful reading of the case of Marbury vs. Maddison will show that the power exercised by the President in appointing Marbury a Justice of the Peace for Washington County, in the District of Columbia, was not conferred on him by Congress by virtue of that clause of the Constitution last above quoted; but the power was exercised by virtue of section 2 of article 2 of the Constitution—the same authority under which Parsons and Nininger were appointed to office. Having the power under the Constitution to make the appointment, the question of the President's implied power to remove was directly raised in that case. The Court held that there was no such power. That case is re-affirmed in the late case of McAllister vs. U. S., 141 U. S., 174.

District Attorneys and Marshals are under the "general superintendence" of the Attorney General.

Revised Statutes, section 362.

They are, therefore, *inferior* officers, within the meaning of section 2 of article 2 of the Constitution, and the power to appoint them could and should be taken from the President and conferred upon the Judiciary.

Ex parte Hennen, 13 Peters, 231.

If *express* power to appoint these officers can thus be taken from the President, *a fortiori*, can any supposed *implied* power to remove them be taken from him?

In 1875 Chief Justice Brickell, of the Alabama Supreme Court, in Thompson vs. Holt, 52 Ala., 502, said: "Public offices are public trusts, created for the due and orderly administration of the law, the preservation of public peace, the convenience and advantage of the citizen, and the protection of individual right and interest." The President of the United States, as many of his predecessors have done, deals with public offices as "spoils" with which to reward "offensive partisans" for service rendered the political party to which he belongs.

If "public offices are public trusts," as Judge Brickell has defined them to be, then they are properly regulated by law. If they are "spoils," as treated by the President, then all laws in regard to their tenure should be repealed, not ignored.

Express authority was conferred upon the President *by statute* to remove District Attorneys and Marshals prior to the passage of the Tenure of Office Act in 1867. While this act was in force no President, except President Johnson, ever assumed to remove officers in violation of its provisions. This act (Rev. Statutes, secs. 1767–68,) having been repealed, leaves the terms of the offices of District Attorney and Marshal fixed, by R. S., sections 769 and 779, at four years, with no power (since these statutes were brought forward in Revised Statutes omitting clause providing for removals, etc.,) left in the President to remove them. As to the effect of the revision of the Statutes, see U. S. vs. Bowen, 100 U. S., 503.

There being no vacancy when O'Neal and Musgrove were appointed, their appointments were without authority and are void.

Harrison vs. State, 3 Am. St., 663.

Respectfully submitted,

J. A. W. SMITH,

Attorney for Petitioner.

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STATEMENT OF FACTS.

Lewis E. Parsons, Jr., was appointed United States Attorney for the Northern District of Alabama, on the 4th day of February, 1890, by President Harrison, by and with the advice and consent of the Senate. His commission and the statute (R. S., section 769) authorize him to hold said office for a term of four years. President Cleveland notified Parsons that he was removed from office, no cause being assigned, and, on the 26th of May, 1893,

appointed Emmett O'Neal to succeed him. On the same day J. C. Musgrove was appointed to succeed A. R. Nininger as Marshal of said District under like circumstances. Parsons and Nininger refused to surrender their offices, and deny the President's power to remove them.

On the 20th day of June, 1893, at a regular term of the Circuit Court of the United States for the Southern Division of the Northern District of Alabama the Hon. John Bruce, as Judge of said Court, recognized the said O'Neal and Musgrove as the officers of the United States, and caused separate orders to be made on the minutes of the Court, commanding the said Parsons and Nininger to turn over to said O'Neal and Musgrove the books, papers and other property appertaining to the said offices. Parsons and Nininger then separately moved the Court to vacate such orders and to reinstate them in office, which motions the Court refused to consider. They now separately petition this Court for a mandamus commanding the said Judge of the lower Court to vacate said orders and to reinstate them in office.

BRIEF AND ARGUMENT.

Parsons and Nininger were in the possession of the offices under color and claim of title, and had the right to perform the duties thereof until the question of title could be adjudicated in some proper proceeding instituted for that purpose.

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Petitioners having been wrongfully deprived of their offices by the Court without due process of law, and in which they have *vested* rights (*Marbury vs. Maddison*, 1 *Cranch*, 137), are entitled to a mandamus requiring the lower Court to vacate the orders made and to reinstate them in office.

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No statute was cited in the Court below, where counsel appeared in behalf of O'Neal and Musgrove, conferring power on the President to remove District Attorneys or Marshals. It was claimed that the Constitution confers the power, not in express terms, but by implication.

Our national government was founded upon the theory that all governmental power is derived from the people or from the States composing the Union. By the adoption of the Constitution, the people, or the States, delegated to one or the other of the three departments—the executive, the legislative, or the judicial—all the powers possessed by the National government. That the power to remove or to provide for the removal of District Attorneys and Marshals has been delegated to one of these departments there is no doubt. That it has been delegated to two of the departments will hardly be contended. It has not been delegated to the judicial department. Then to which one of the two—the executive or the legislative department—has the power been delegated?

Counsel for O'Neal and Musgrove contend (or, rather, did contend in the Court below) that the power has been delegated to the executive. They contend that there are three distinct and separate grants of power in the Constitution conferring this power upon the President. They claim that the provision of the Constitution which requires that the President "shall take care that the laws be faithfully executed" is broad enough to authorize him to make removals from office at pleasure. Justice McLean expressed the view in U. S. vs. Guthrie, 17 Howard, 305, "that the power to see that the laws are faithfully executed applies chiefly to the giving effect to the decisions of the courts when resisted by physical force." This view seems to us to be the correct one. A similar provision is in the Constitution of Alabama, and I suppose in most of the other States, but I have never heard of a Governor of any State undertaking, by virtue of such constitutional requirement, to remove officers whose terms were prescribed by the Legislature. The *law* provides that these officers shall hold their offices for four years from the dates of their commissions. Instead of seeing that *this law* is faithfully executed, or even using his influence to accomplish

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It is also claimed that the provision of the Constitution declaring that the "executive power" shall be vested in the President, is a grant of power to make removals. The answer to this proposition is, that this general grant of "executive power" to the President was never supposed to invest him "with the appointing power, which, after long and earnest debate, was conferred upon the chief executive of the nation by express terms."

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PRESIDENT HAS NO CONSTITUTIONAL POWER TO REMOVE.

The principle which was recognized by Congress at an early day, and which has ever prevailed in the courts of this country, that where an office has no tenure, the appointing power may exercise the power of removal, is not dependent for its existence upon the instrument granting the power to appoint, but rather arises from the OMISSION of the law creating the office to prescribe a term. If an office is created *by the Constitution*, and no

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Meacham on Public Offices, sections 445, 454.

Opposing counsel contend that Congress decided in 1789 that the President had constitutional power to remove officers appointed by the Executive with the advice and consent of the Senate, and that such legislative construction has been acquiesced in ever since. It is also claimed that a similar construction was made by Congress in 1835, and by the Senate upon the impeachment trial of President Johnson in 1867. We deny that either contention is true.

The question before Congress in 1789 was, whether the President *alone* had power to remove an officer appointed by the President, by and with the advice and consent of the Senate, when there was NO TENURE to the office, or whether it was necessary that the Senate should consent to such removal before it became effectual. It was admitted by all the members that the President and Senate—the two constituting the appointing power—could make the removal. Not, however, from anything contained *in* the Constitution, express or implied, but upon the general principle that the appointing power can remove in the absence of a law fixing a term to the office.

Ex parte Hennen, 13 Peters, 231.

Congress decided that, inasmuch as great inconvenience

would result from requiring the consent of the Senate before removals could be made, the President could remove without such consent. The question here is quite different. The law provides that these officers shall hold their offices for four years from the dates of their commissions, and this time has not expired.

The decision of Congress, referred to, insofar as it was held that there was an implied power residing in the appointing power to make removals, was more properly a construction of *the act of Congress* which omitted to prescribe a term to the office, than a construction of the Constitution. The only constitutional question decided was that the President *alone* could exercise the power, which was conceded to be in the appointing power, to make removals from office when there was no tenure fixed by law. In other words, after determining from a construction of *the statute*, which fixed no tenure and was silent as to any power of removal, or fixed a tenure but provided that the officer should be removed at pleasure, that the power of removal was by implication vested in the appointing power; the Congress then decided the only constitutional question raised, in favor of the power of the President *alone* to exercise this implied *statutory* power of removal.

Implied power to remove being conceded to be in the appointing power, the constitutional question then arises, whether the President *alone* can exercise this power, or whether the consent of the Senate is necessary to its exercise. This constitutional question does not arise in this case, because *there is no implied power of removal*, and hence no inquiry as to who shall exercise such a power. These offices have terms. The implied power of removal only arises when there is no term.

The power to fix a term depends, probably, upon the power to create the office. In regard to *constitutional* offices, a constitutional question would arise if Congress should attempt to

prescribe terms. The theory that the framers of the Constitution intended that the appointing power could remove, when that instrument created offices without terms, is very plausible. But the offices here in controversy are created by Congress, under Constitutional authority, and ~~where there is, in such cases~~, omissions to prescribe terms, ~~they~~ are Congressional and not Constitutional omissions, and no *Constitutional* intention can be gathered from any omission of *Congress.*

Congress having fixed terms to the offices of District Attorney and Marshal, by virtue of the power conferred on that body by the Constitution, no other power, unless it is granted by the Constitution or laws, can shorten the terms, and no such authority having been given the President by either, his power to do so does not exist. The following cases support this proposition:

Marbury vs. Maddison, I Cranch, 137.
McAllister vs. U. S., 141 U. S., 174.
U. S. vs. Avery, — Deady, 204.
U. S. vs. Guthrie, 17 Howard, 305.
U. S. vs. Perkins, 116 U. S., 483.
Mullen vs. U. S., 140 U. S., 240.
Kilbourn vs Thompson 13 Otto 168

In the great debate in 1835, Congress having under consideration a bill restricting the power of the President in regard to making removals from office, nothing was decided as to the Constitutionality of the proposed legislation. True, that question was freely and ably discussed; and in its discussion, the fact that Webster, Clay and Calhoun all expressed the belief that Congress had power to regulate the tenure of office, is entitled to great weight. All that was decided, however, was that the bill should not become a law. It does not necessarily follow that, because Congress refused to enact proposed legislation, that that body decided it had not power to do so. It was probably deemed unwise legislation, and was, for that reason, defeated.

It is argued by the opposing counsel that, because the Senate failed to convict President Johnson in 1867, that that body thereby decided that the tenure of office law, which he had violated, was unconstitutional. Not so. The Senate only decided that he was not guilty of a crime. He had misconstrued the law. The question of the constitutionality of the tenure of office law was directly in issue when Congress passed that bill over the veto of the President, and its constitutionality was, by that action, sustained by a two thirds vote of both houses of Congress. Even had Congress in 1789 decided that the President had power, vested in him by the Constitution, to remove officers, the effect of the passage of the Tenure of Office Act, in 1867, was to *overrule* the former decision. Not only was the Tenure of Office law decided to be constitutional in 1867, but its modification in 1869 was another legislative construction that the law was constitutional. The Supreme Court in McAllister vs. United States, 141 U.S., 174, treated the law as constitutional, and referred the power, exercised by the President suspending a judge of a Territorial Court, to section 1768 of the Revised Statutes, and not to any implied power in the Constitution.

If the power was given by the Constitution to the President to make removals at his pleasure, either expressly or by implication, Congress could not fix a period when officers' terms should expire. Although the President may desire an officer to continue to perform the duties of an office, after the expiration of the term he is no longer entitled to do so; and in cases of the District Attorneys' and Marshals' offices, vacancies thus created may be filled by the Circuit Justice, despite the wishes of the President.

Revised Statutes, sec. 793.

The President can restore an officer whose term has expired only by a new appointment, made by and with the advice and consent of the Senate. If the Senate refuses to give its consent,

then the officer, once legally appointed by the President, *is removed* by operation of a law enacted by Congress.

An act approved June 20, 1874, (see supplement to Revised Statutes, second edition, page 18, sec. 2,) provides in substance: That the offices of District Attorney and Marshal shall be deemed vacant unless the officers shall reside in their districts and give personal attention to the business of the offices. This latter statute shows that Congress has asserted its own right to remove officers, or, which is the same thing, to prescribe conditions by which the offices become vacant. This legislation is inconsistent with any constitutional power of removal in the President. Either Congress or the President has assumed to exercise power not conferred by the Constitution. The Supreme Court has decided the power is with Congress.

This Court, in the case of Marbury vs. Maddison, 1 Cranch, 137, Chief Justice Marshall delivering the opinion, held, that the President had no power to remove a Justice of the Peace appointed by himself, with the consent of the Senate, whose term of office was fixed by act of Congress at five years.

It is contended by opposing counsel that the case of Marbury vs. Maddison is not an authority governing this case, because it is claimed that sub-division 17 of section 8 of article 1 of the Constitution gives to Congress some power in regard to the offices of the District of Columbia not possessed by that body in regard to Federal offices generally. That part of the Constitution provides: "That Congress shall have power to exercise exclusive *legislation* in all cases whatsoever over such District," etc.

The only extra power conferred by that constitutional provision upon Congress is to exercise *legislative* power to the exclusion of the States once owning the territory, and to the full extent that may be necessary to enforce a proper police regulation for such District. It was never intended to take from the President

any of his powers, otherwise granted, because the matter should happen to be concerning the District of Columbia. Congress is certainly the only department of the government that has power to exercise "*legislation*" upon the question of Federal offices. Only the *legislative* power of Congress extends farther in regard to the District of Columbia than to other portions of the United States.

A careful reading of the case of Marbury vs. Maddison will show that the power exercised by the President in appointing Marbury a Justice of the Peace for Washington County, in the District of Columbia, was not conferred on him by Congress by virtue of that clause of the Constitution last above quoted; but the power was exercised by virtue of section 2 of article 2 of the Constitution—the same authority under which Parsons and Nininger were appointed to office. Having the power under the Constitution to make the appointment, the question of the President's implied power to remove was directly raised in that case. The Court held that there was no such power. That case is re-affirmed in the late case of McAllister vs. U. S., 141 U. S., 174.

District Attorneys and Marshals are under the "general superintendence" of the Attorney General.

Revised Statutes, section 362.

They are, therefore, *inferior* officers, within the meaning of section 2 of article 2 of the Constitution, and the power to appoint them could and should be taken from the President and conferred upon the Judiciary.

Ex parte Hennen, 13 Peters, 231.

If *express* power to appoint these officers can thus be taken from the President, *a fortiori*, can any supposed *implied* power to remove them be taken from him?

In 1875 Chief Justice Brickell, of the Alabama Supreme Court, in Thompson vs. Holt, 52 Ala., 502, said: "Public offices are public trusts, created for the due and orderly administration of the law, the preservation of public peace, the convenience and advantage of the citizen, and the protection of individual right and interest." The President of the United States, as many of his predecessors have done, deals with public offices as "spoils" with which to reward "offensive partisans" for service rendered the political party to which he belongs.

If "public offices are public trusts," as Judge Brickell has defined them to be, then they are properly regulated by law. If they are "spoils," as treated by the President, then all laws in regard to their tenure should be repealed, not ignored.

Express authority was conferred upon the President *by statute* to remove District Attorneys and Marshals prior to the passage of the Tenure of Office Act in 1867. While this act was in force no President, except President Johnson, ever assumed to remove officers in violation of its provisions. This act (Rev. Statutes, secs. 1767–68,) having been repealed, leaves the terms of the offices of District Attorney and Marshal fixed, by R. S., sections 769 and 779, at four years, with no power (since these statutes were brought forward in Revised Statutes omitting clause providing for removals, etc.,) left in the President to remove them. As to the effect of the revision of the Statutes, see U. S. vs. Bowen, 100 U. S., 503.

There being no vacancy when O'Neal and Musgrove were appointed, their appointments were without authority and are void.

Harrison vs. State, 3 Am. St., 663.

Respectfully submitted,

J. A. W. SMITH,
Attorney for Petitioner.

150 U.S. 150

In the Supreme Court of the United States.

OCTOBER TERM, 1893.

ORIGINAL NO. —.

EX PARTE LEWIS E. PARSONS, JR.

PETITION FOR WRIT OF MANDAMUS.

BRIEF IN OPPOSITION TO MOTION FOR LEAVE TO FILE PETITION.

In the Supreme Court of the United States.

OCTOBER TERM, 1893.

ORIGINAL NO. —.

EX PARTE LEWIS E. PARSONS, JR.

PETITION FOR WRIT OF MANDAMUS.

BRIEF IN OPPOSITION TO MOTION FOR LEAVE TO FILE PETITION.

This is a motion for leave to file a petition for a writ of mandamus. I submit that a *prima facie* case is not made out to justify the issuing of a rule to show cause, and that leave to file the petition should therefore be denied.

In *Ex parte Taylor* (14 How., 3, 12), Chief Justice Taney said:

> According to the established practice of this court a rule of this kind is not granted as a matter of course, and the inferior court is never called on to show cause unless a case is presented which *prima facie* requires the interposition of this court. It was so settled in the case of *The Postmaster* vs. *Trig, administrator of Rector*, 11 Pet., 173.

The writ at bar is asked to compel the judge of the circuit court for the northern and middle districts of Ala-

bama to vacate the following order, entered by him June 20, 1893 (Record 12, 13):

> Now comes Emmet O'Neal, district attorney of the United States for the northern district of Alabama, and represents and shows to the court that he has demanded of Lewis E. Parsons, jr., the former United States district attorney for said district, the possession and custody of the books, papers, and property belonging to the said office, and that the said Lewis E. Parsons, jr., has refused to surrender the same; and the said Emmet O'Neal now moves the court for an order to require the said Lewis E. Parsons, jr., to surrender and turn over to him the possession and custody of said books, papers, and property, and counsel for the respective parties being heard: It is considered by the court that the said Lewis E. Parsons, jr., the former United States district attorney for the northern district of Alabama, do forthwith, or as soon as practicable, turn over and deliver to the said Emmet O'Neal, as district attorney of the United States for the northern district of Alabama, all the books, papers, and property pertaining or belonging to the said office of district attorney of the United States for the northern district of Alabama, taking the receipt of the said Emmet O'Neal, district attorney for the United States for the northern district of Alabama.

The petition also prays that the judge of the circuit court may be required "to reinstate the petitioner in said office" of district attorney (Record, 3). But no proceeding for that purpose is pending in the circuit court. The order of June 20, above quoted, is the only order made by the circuit court, the only judicial action taken by it, and the claim of the petitioner therefore is that this court may compel the vacation of that order by mandamus.

The order does not undertake to determine the title to any office or to any property. It relates solely to the possession of certain books, papers, and property. It was made upon the petition of Mr. O'Neal, after notice to

the petitioner, and after he had been heard. The value of the property is not shown.

I submit that mandamus can not be used for the purpose of reviewing such an order, in this court.

Ex parte Flippin, 94 U. S., 348.

Ex parte Burtis, 103 U. S., 238.

In re Humes, petitioner, 149 U. S., 192.

In *Ex parte Flippin*, Mr. Chief Justice Waite (page 350) said:

> Under that form of proceeding we may compel an inferior court to decide upon a matter within its jurisdiction and pending before it for judicial determination, but we can not control its decision. Neither can we in that way compel the inferior court to reverse a decision which it has made in the exercise of its legitimate jurisdiction. That is the office of a writ of error or an appeal in cases to which such proceeding applies, but not of a writ of *mandamus*.

In *Ex parte Burtis* Mr. Chief Justice Waite said:

> A writ of *mandamus* may be used to compel an inferior tribunal to act on a matter within its jurisdiction, but not to control its discretion while acting (*Ex parte Railway Company, 101 U. S., 711*), nor reverse its decisions when made (*Ex parte Flippin*, 94 *id.*, 348). Both these rules are elementary, and are fatal to this application. The district judge took jurisdiction of the matter, as it was his duty to do, heard the parties, and decided adversely to the claim of the petitioner. In this he may have done wrong, and the reasons he has assigned may not be such as will bear the test of judicial criticism; but we can not, by *mandamus*, compel him to undo what he has thus done in the exercise of his legitimate jurisdiction. He was asked to punish a person for contempt in disobeying the process of the court. He decided not to do so. This action of his is beyond the reach of a writ of *mandamus*.

In *Barry* vs. *Mercein* (5 How., 103–119), Chief Justice Taney said:

> By the Constitution of the United States the Supreme Court possesses no appellate power in any case unless conferred

upon it by act of Congress, nor can it when conferred be exercised in any other form or by any other mode of proceeding than that which the law prescribes.

The case of Alexander R. Nininger, who also asks leave to file a petition for mandamus, is similar to that of Mr. Parsons. This brief is filed in opposition to that motion, as well.

Prior to the filing of these motions, to wit, on August 22, 1893, Mr. O'Neal was appointed district attorney, by and with the advice and consent of the Senate, to succeed Mr. Parsons, and Mr. Musgrove was appointed marshal, by and with the advice and consent of the Senate, to succeed Mr. Nininger. So that, if the titles to their offices were involved in the orders sought to be vacated, their present titles depend, not upon the authority of the President to remove their predecessors during a recess of the Senate, but upon his authority to make such removals by and with the advice and consent of the Senate. Under the decisions of this court (*Blake* v. *U. S.*, 103 U. S., 227), that power seems not to be open to dispute; its denial would hardly justify the award of a rule to show cause.

But quite aside from that suggestion, I respectfully submit that there is no warrant for the claim that this court may review, by *mandamus*, the order of a circuit court respecting the possession of personal property, especially where the value is not shown, and that the motions should be denied.

LAWRENCE MAXWELL, JR.,
Solicitor-General.

1502, f. 150

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1893.

No. —.

EX PARTE LEWIS E. PARSONS, JR., PETITIONER.

ON PETITION FOR MANDAMUS.

Reply Brief of J. A. W. Smith for Motion.

The effect of the order made in the lower court and copied in the brief of the Solicitor General was *to deprive petitioner of his office.* Counsel representing Oneal in the court below, to whom petitioner was required to turn over the books, papers, and other property appertaining to the office of United States attorney, used every endeavor to *oust* petitioner from the said office without *any order of court,* so as to put petitioner to disadvantage in any endeavor he might make to have the illegal and unauthorized action of the court reviewed. The first proceeding of any kind in the court below, which was reduced to writing, was the motion of Emmett Oneal, in which he recites that he "has been heretofore recognized by this honorable court as the attorney of the United States duly commissioned, &c." (Record, p. 7; also in bill of exceptions, page 13). No petition for recognition, no suit to determine the question of title to the

office, and *no other writing* whatever was filed in court when the court recognized Oneal as the attorney of the United States.

The answer filed to Oneal's motion (Record, pp. 9 to 12, inclusive; also in bill of exceptions, pp. 16 to 18) shows conclusively that Oneal based his only right to the books, papers, and property appertaining to the said office upon his *supposed right to the office*. This is also shown in his own motion where he states that he was heretofore recognized as such officer and was duly commissioned and had qualified as such.

Petitioner showed by his answer (Record, pp. 16 to 18) and by his testimony (Record, pp. 18 to 22) that he was entitled to the office and had the right to exercise and perform the duties thereof until February 4, 1894, unless the President has *implied* constitutional power to remove him.

Parsons testified:

"I was present at the opening of the present adjourned term of the court on the 19th instant, ready to perform the duties of the office of United States attorney, etc., and am now ready and offer to continue in the discharge of the duties of said office." (Record, pp. 19, 20.)

At a subsequent day during the term, viz., the 21st day of June, 1893, petitioner moved the court below (Record, pp. 22 to 24) "that he be permitted to perform the duties of said office until the expiration of his term fixed by law and by his said commission." This motion the court refused even to consider. (Record, p. 26.)

Besides ordering the petitioner to surrender the books, papers, and other property appertaining to the said office, petitioner was not allowed to perform the duties of his office and another person was *recognized* by the court as the officer authorized to represent the United States.

The authorities cited by the Solicitor General do not apply.

The court, by its action in recognizing Oneal as the attor-

ney of the United States and in refusing to consider Parsons' motion that he be allowed to perform the duties of said office, and in ordering him to turn over the books, papers, and other properly appertaining to said office to Oneal upon the motion of Oneal, in effect deprived petitioner of his office before the expiration of the term and *without due process of law.*

The court acted without jurisdiction.

"Now, this want of jurisdiction of the inferior court in a summary proceeding to remove an officer of the court is one of the specific cases in which this (the writ of mandamus) is the appropriate remedy."

Ex parte Bradley, 7 Wal., 377.

The petitioner is not restricted in this motion to the facts shown by the record of the case in the court below, but is entitled to have every fact mentioned in his petition considered by the court. The petition, which is duly sworn to, recites (page 3) that in obedience to the said order of court petitioner turned over the property therein mentioned, and that since that time "Oneal has been in the possession of and performing all the duties of said office."

If Oneal's appointment is void on account of there being no vacancy to fill, he should not be permitted to perform the duties of the office.

The case of Blake *vs.* U. S., 103 U. S., does not sustain the contention that the President *and Senate* can remove an officer whose term is fixed by law. In that case there was a statute authorizing the removal with the consent of the Senate. No such statute exists as to attorneys or marshals.

Respectfully submitted.

J. A. W. SMITH,
For Motion.